United States Court of Appeals

for the Second Circuit

APPENDIX

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74-1138

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In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee.

vs.

THOMAS JOSEPH CARROLL, VINCENT McCLOSKEY and WILLIAM McCLOSKEY,

Appellants.

APPELLANTS' APPENDIX

Volume VIII, pp. 2101a - 2400a

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station wagon that the government would like you to believe some one of the defendants stole and used in the so-called caper that was taken on the 30th. And that was a '73 station wagon.

We have conflicting testimony. I think one fellow says an old one about '67; another one says about a '70. Another one says a blue-green. But I will leave that up to you, whatever you believe, because it is up to you.

Then Chester talks about different phone calls, and there is a whole record of it.

Incidentally, Turner, in his beautiful rendition of these incidents of the last week, he has attempted hold-ups and meetings downtown on April, as I remember it, April 3rd, April 4th, April 5th, and you know, right up until the day -- in other words, they went down almost daily, these bunch of guys, and they were running around, you know, jumping on trucks and figuring stop signs.

He says he telephoned Myers -- this is Chester Crawford, and I believe if you analyze these telephone records you will find that Myers, or at least somebody at the Myers number was down in Washington receiving calls during that whole week, and I believe if you analyse it

and look at it from the 1st, the 2nd, and the 3rd and the 4th of April -- but this is in the evidence and you people can check it -- incidentally, he also testified to calling Harry, I believe, and Geoffrey. I asked the government agent packaging the case, Mr. Kievit, if he had Harry's records, telephone records with him. I asked him if he had located and found Geoffrey's records. And he said there were two places where he lived. I asked him if he had checked out Chester Crawfords' records, that is, telephone at home, at home. And you didn't see them in evidence.

I would think that if you could check from a man's friend's house, where he made these telephone calls, it would be very obvious to check from a man's home, with his wife and children, what calls were made.

Chester Crawford, on direct, he responded pretty good. He would be asked specific dates and he would give relatively decent times and places and hours, but he was a little different kind of witness on cross-examination. As I remember him on cross-examination, he was very explicit, very meticulous, wanted the question placed very exactly, never gave any answers voluntarily; you had to ask the specific question.

He also said, starting in October of last year, he had his own government agent assigned to him who he used

to contact and meet periodically. I think he said it was a government agent by the name of Allen Garber.

Incidentally, this government agent business, I don't know whether he had a license to go out and steal on a state-wide basis or not, as the other double agent did, but his association went back to October '72, and this was about the time that Chester Crawford was down in that area with these other people, the other three, Rogers, Dixon and the man who testified -- I don't know if he was doing that for the government or in an individual, private capacity. I will leave that up to your interpretation.

Did Chester Crawford have any motive to lie? Obviously, to the extent he cooperated, he was going to be rewarded. Did he, in fact, lie? Obviously. He denied his own son. I asked him a question. "Do you have three children?"

He denied his own son, his first-born, his own flesh and blood -- Chester Crawford.

Next we come to Mr. Boyd who was a short witness, and he was one of the gentlemen, who, I believe, Chester had talked about, and he had talked too about meeting before the period of the indictment here, about a mail truck situation.

This man, poor man, was in jail for, I believe

it was, eight years, three years and four years. I don't know how they were running, but nonetheless there was an eight year sentence which is pretty substantial.

THE COURT: You have five minutes more, Mr. Martin.

MR. MARTIN: Five?

THE COURT: You have five minutes more.

MR. MARTIN: Oh, I'm sorry. I'm sorry, your Honor.

Rather than going through this any more specifically, I'll just ask you to remember the witnesses as they come down the line, and I would like to point out, with Turner, his first initiation was on a yellow Hertz rent-a-truck. He said the truck was yellow. It was a Hertz truck. He didn't see any government people inside. He saw a little paper sign, as I recollect it, along the side. This was the same man who said that on the day of the shooting or afterwards, he looked back or stuck his head out and he saw the driver drinking whiskey, and he saw the other fellow drinking whiskey, and this was the man, his credibility, to show his way of thinking, this was the man, when I asked him if he drank whiskey, said no, but he was being cute. He drank Scotch. This was Turner on the stand.

I am obviously not going to be able to get

through the witnesses and the exhibits. I would like you to take into consideration the different pictures we put into evidence, which show the location, the parking lot, the fact that there is no stop sign at the hospital, the fact that there is a subway entrance at the corner, whatever else you see in these exhibits, I'd like you people to look at them so you will know what in fact that place was like and not what in fact these people say or think it was like, if in fact they were there.

The count in this indictment I would like you people to -- I would like to clarify it in a limited time. My defendant, Vincent McCloskey, is charged with three crimes. The second crime is murder in the first degree. The third crime is assault in the first degree, on april 5th, 1973. The malicious count is a count of conspiracy brought by the government which charges them from January to date with conspiring to steal mail bags from a letter mail carrier, and it was part of the conspiracy to attempt a hold-up, and then they list overt acts.

Here is what they list for overt acts:

On March 20, '73, Chester Crawford, Paul Crawford and Terrence Myers went to the vicinity of Wall Street.

On the 22nd of March, Chester Crawford met with

Thomas Carroll and Vincent McCloskey in the vicinity of Fulton Street.

On April 5th then they name everybody, including Terrence Dewey Myers, met at Katz' Delicatessen.

In fact, he didn't. Terry Myers was up in some woman's apartment. He wasn't even there.

These are the acts. They weren't charged with hold-ups in Secaucus, sitting on the sidewalk here, robbing cars, robbing trucks, van -- that documentary was taken on the 30th; they said -- somebody else said it was used on the 28th. They are not charged with any of that. That was brought in only on purpose by the government so prejudice these men and to try them for crimes for which they are not charged, to blacken their name and to make it look as if they did something so they could lump it into Counts 1 and 2. This is why the government did it. This is what government agents are doing, this is what your government agents are trying to do to these innocent men here.

During the course of the trial I am sure I became impulsive and I probably irritated not only his Honor, the judge, I probably irritated some of you people, and if in my anxiety for my client I overstepped my bounds, I would like to apologize, and I ask that you don't hold it against

my friend and client, Vincent McCloskey.

I would like to end now. The Judge has kindly warned me that I had five minutes more and I suppose it is now just about up.

I would like to ask you to use your best efforts, come back with a fair verdict, and on behalf of defendant Vincent McCloskey, his family and myself, I would like to wish you the very best for the holidays and a Merry Christmas.

Thank you.

THE COURT: We will recess for lunch and return at 2:00 o'clock, ladies and gentlemen.

I mean 1:00 o'clock. Did I say 2:00?

1:00 o'clock.

(Luncheon recess.)

2108a

AFTERNOON SESSION

1:00 p.m.

(Jury present.)

MR. DIRENZO: May it please the Court, counsel for the defense, Mr. Kenney, Mr. Foreman, ladies and gentlemen of the jury: this is the last opportunity that is afforded me to address you in the defense of my client. Some areas of necessity, I may be repetitious. I sincerely hope that I can keep repetition at an irreducable minimum.

You have been very patient and we recognize that.

I have been allocated one hour and fifteen minutes, and I sincerely hope that within that hour and fifteen minutes or less, that I can convince you that Thomas Carroll shouldn't spend the rest of his life in jail.

This is a very, very serious case, and, mind you, any argument that I make to you is an argument that we say comes within the realm of fair comment from the evidence that you have heard here or from the lack of evidence that you haven't heard.

You as jurors are given specific blood-tested concepts that you as jurors must apply. One of the concepts is that the defendant need not testify in his own behalf. No defendant has testified. And you are to draw no inference from that.

You gave us your solemn oath, a meaningful oath, an oath that was administered to you by the Clerk of this Court. It was an oath to our God. That oath is most meaningful to you.

Then I am going to suggest to you that you decide how meaningful the oath that was taken by the perpetrators of this horrendous defense is as meaningful to them.

Among the conepts -- and this is a bit repetitious -- is that if you find that any witness wilfully testified falsely as to a material fact you, as a juror, discussing in the jury room with your fellow jurors, have a right to state "I found that witness A wilfully testified falsely as to a material fact. I elect to disregard his entire testimony."

The law says you may reject just that portion of it or all of it. That is your prerogative as a juror.

The law also says the burden is on the prosecution to establish the guilt of each of these defendants beyond a reasonable doubt.

His Honor, I am sure, can and will more eloquently explain that concept to you.

Within the realm of fair comment, I state to you that you can reasonably reach the conclusion that the architect of this criminal plan was Mr. Turner.

Let me give you a little preamble to our good

friend, Mr. Turner. I say you have a right to completely disbelieve him.

Let me tell you why I feel that you can think and act that way.

I would describe Mr. Turner as a malignant carcinoma who has completely metastasized. On at least 20 separate occasions he tells you that he cooperated with the government. True, you heard it.

Now, what did that mean? On 20 separate occasions, by his own testimony -- and I am reluctant to call it testimony, because it is backed up with an oath -- he had to deceive the people that he was dealing with as wrongdoers, as hijackers, as thieves, whatever nefarious deal that they were involved in, he had to ingratiate himself with those men, and deceive every one of them and obviously he succeeded, because he tells us he received 20 separate payments for the services he rendered.

Not only did he deceive them, you must remember, he must be a perfectionist in the art of deception.

Now, to go further, what must he do? He must cooperate with the government. And ironically enough, which is very rarely seen, we have basically a written agreement between the government and the witness.

You have heard a lot about testifying, full

cooperation and all that sort of thing. That means only one thing -- make it convincing. And nobody is better in the art of making it convincing than our good friend, Mr. Turner.

He told us about his agreement with the government. He couldn't get immunity from state crimes, but basically it was okay to commit federal crimes, as long as you alert us.

They talk about the Secaucus caper. He told us he was going to do that on his own, put the money in his pocket, and he did, in fact, put it in his pocket. But for that he told you, that being a state crime, he couldn't get immunity.

Isn't it ironical that he did receive immunity for that very same crime, one for which he was not to receive absolution? But he got it. How did he get it? He didn't get it from a state agency. He didn't get it from a state prosecutor's office in Jersey. He got it from the United States Government.

Now, this master in deception has one final job to do, and he can only do it if 12 of you jurors permit him to do it. He has to deceive 12 of you. A man who has been doing this over a period of years. Turner doesn't think that is a difficult job. He has deceived the government. He has deceived his cohorts in crime. And you put the icing

on the cake, let him deceive you.

Is that man worthy of belief? Have you, each of you, a right to say, "I wouldn't believe a single, solitary word that that man utters?"

Why do I say or suggest, within the realm of fair comment, that he was the architect of this crime? He told us on cross-examination, did he not, that he did not alert the government to this mail truck robbery that was contemplated? He said that to no one in the government and he had more than adequate opportunity to bring it to the attention of the government.

Why didn't he do it? Turner was a piece worker for the government. Turner was an informer. He could have picked himself a nice piece of change in delivering to the government a mail truck robbery.

Why didn't he do it? He says he heard something about $300,000, bonds, diamonds. This would have been another little caper that he could pocket for himself.

Why else do I suggest that he engineered this particular crime? You recall the testimony about the bepper. Nobody seemed to know anything about that beeper but Turner. He was to disconnect it. Now, that little bit of evidence, to my mind, is very significant. It was necessary to disconnect that bepper so that if the robbery was successful, by electronic equipment or radar there would be no trouble locating the general area where the truck might be.

Who knew anything about the beeper? That was Mr. Turner. So much for him for the moment. We will get back to him again.

Let's talk about Chester Crawford.

Chester Crawford, like each of the testifying witnesses in this case, loves liberty. What would Chester Crawford do to obtain this liberty? One of the expert witnesses in hijackings told us, did he not, that on the very morning of April 5th he wanted to know whether Mr. Myers and Mann would do a "hit" on an employee or someone that had worked with him, that he had reason to believe was going to inform on him. I think you recall that testimony. I thi you are satisfied at this point that hitting a man in t context was not, as Crawford said, punching him. You know that is nonsense. You know he lied when he said

that. Hitting a man meant shooting him in the head, killing him. Why would he want him killed? The answer is very simple. If you are dead, he couldn't testify against Crawford. If he couldn't testify against Crawford, Crawford could go scot-free. So what does lying mean to a man like Crawford when he is ready to have a man shot dead, to destroy his usefulness in a prosecution against him? Bear that in mind in determining how much credence you want to give to our good friend Crawford. We will get back to him.

Let's take Mr. Myers. You heard the description of the shooting. He showed you that this was an accident, he didn't mean to shoot or kill that guard; he only pointed that pistol at him so that he would frighten him, because he said there was to have been no resistance; he says that, and he described the way he jumped on that running board, a big man. You saw the size of him. He put a pistol in the window. Correct? The guard pulled him by the hand, it went down. By the way, it was his left hand. The gun went off.

Now, if the gun went off in the manner in which he described, with that gun in a downward position, just applying your God-given common sense, that bullet would have hit one of the lower extremities, some part of the low portion of the body.

But where did the bullet enter? Dr. Tibere

tells us. What did Dr. Tibere testify to? The bullet went over, below the eyebrow and above the eye, went right through the head, and it came out on the left side, in the back of the head, and that was the same bullet that struck the operator of the vehicle. Something significant. There were powder burns. Powder burns meant that that gun was, I think he said, within a radius or area of about six inches from the head. So when that bullet was fired it went through that man's head in very close proximity.

Now, did Mr. Myers at that point feel, "This guard now knows me; he has been my face; this man could give testimony against me"? I don't know if this is the way these illegal minds function or operate, and it is for you to say. Did he shoot him in the head to make sure this would not be a man who could testify against him? I don't know. That is for you, all of you 12 to decide.

Let's go to the opposite side of the truck. We have Mr. Mann there. Before we get to that, is there any doubt in your mind that he knew at that point, Mr. Myers that the guard was mortally hit? He said that he saw the bullet hole in the neck and he was satisfied he was mortally hit. And you remember me showing him -- it is an exhibit in this case -- a diagram of a gun. And he described how he shifted the gun from the left hand to the right hand, and

then he tried to unlock the door of the truck. And what I am about to tell you, I think is very significant -- you might not think so -- he said, "I dropped the gun onto my pinkey, still trying to open the door." He remembered that detail. And I think I asked him, what part of the gun he held and he said it was the trigger guard -- the trigger guard. How many of us know what the trigger guard is? But he remember that. And while the had the gun, the trigger guard on his pinkey, he was trying to open that door. For what? He still wanted to take that man out of the truck and put him in a vehicle that was to transport that man away. That is cold-blooded thinking.

Do you right now have the stomach to want to believe anything a man like that says, one of the same men who subsequently went to a restaurant, had a drink, and remembered eating some delicious Italian food. I asked him whether it was veal parmigiana, veal cacciatora, or chicken rizotta and he said the food was good. Doesn't it want to make you up-chuck right here? He just killed a man. He said he knew he was dead. And he was dead, by the hand of Mr. Myers. That same man could go into a restaurant and relish a meal.

You have reason to say in that jury room when you deliberate among yourselves to refuse to believe a word of

his testimony.

Let's go over to the other side of that truck -- Mr. Mann. Any doubt that Mann had a gun? From the story that was elicited from him -- and Mr. Kenney elicited from him on direct examination -- and I say "story" -- I am reluctant, most reluctant, to characterize it as testimony-- I am reluctant to do that only because testimony usually carries with it and implicit with it the sanctity of an oath. An oath here means nothing.

Let's get to Mann.

It seems reasonably certain to me that after the guard was shot, that this hold-up was pretty much at an end-- they weren't successful; they weren't successful. Miraculously, Lawrence managed to get away. He ran. You remember him testifying -- and it is on the chart -- that he ran in a zig-zag motion. As he was going down the street, he ran that way because shots were being fired at him. And the best way to avoid a shot was to run zig-zag, and that is exactly what he did. But what is more devastating, more cruel, more rotten than a man standing there with a gun that has six chambers in it, he said, and four bullets in those chambers, and he fires at a man who is getting away. Four solid shots. He empties that pistol. Every bullet in those chambers was expelled. And we find that two of them, only

because the jacket opened while he was running, hit the jacket, but, fortunately did not wound the driver.

Why did he do it? Why did he do it? He loves liberty. He doesn't like to go to jail. Isn't that a good way to get an identifying witness out of the picture? Think about it a little bit. Does it make sense? Or am I just here trying to make with words without logic or without common sense or without sincerity? Just think about it.

You were asked to convict these four men -- and, remember, I only represent Tommy Carroll. Guilt is individual. His Honor will tell you that you are to evaluate the evidence against each defendant separately. But you are asked to convict these four men on the testimony and the evidence you have heard here. Again, I say "testimony," but I almost bit my tongue when I said testimony. When you get to your jury room you will have to ask yourselves and say there is not a solitary independent, unbiased eyewitness to the commission of this crime. All of the testimony in this case -- again with reluctance do I say testimony -- comes from perpetrators.

And I would like to leave with you one thought. If I leave this thought with you, I feel that I have delivered a salient message to you. This is one case where 12 jurors don't have to say, "This poor guard was killed, a

driver was shot, and we can't let the wrongdoer go scot-free." You don't have to worry about that in this case, because every participant, every wrongdoer by his own admission has stated, "I did it; this is the role I played; this is the role I played; this is the role I played; this is the role I played; this is the role I played; this is the role I played. So you don't have to feel that you are letting a guilty man walk out of those doors.

Mr. Kenney, I am quite certain, is going to tell you that in certain areas, his witnesses have been corroborated; he has got independent proof to back up their stories Well, what does he have? He has hotel records, motel records, car rental agreements, telephone calls. There might be some other things that I didn't think of beforehand in anticipating what he is going to say -- he has the last word -- but I know there is not an argument he could make that I can't answer. But I can only anticipate. Hotel records? They have proved that these men or some of them were in those hotels at those given times. Definitely. Nobody quarrels with it. I agree with that. They were there.

Telephone calls from the Vasquez number to Wall's Tavern? No doubt about it. Has there been one single bit of testimony here by anyone, except the malfactors, that Tommy Carroll was the one who received the calls? Anybody

here to say, "I heard the voice; that is the voice of Tommy Carroll"? Not a word. Not a single word. Was Chester Crawford and Turner at Wall's on many occasions? No doubt about it.

Let me go to Mann a little bit. Half of his testimony has been gone over so thoroughly, but there is one area that I don't know has been adequately covered. I took Mann down the line after his direct testimony, and if you recall, I tried to take every single date. He was talking about conversations. And if you recall date by date-- and write this down, Mr. Kenney -- I want to hear the answer to this -- even Mann said he never overheard a single conversation that Tommy Carroll is alleged to have had with Chester Crawford.

Now in this case you could as jurors become very much confused. And that, basically, has been the structure of this prosecution. You are here hearing a murder case, robbery, assault, conspiracy. And you have heard testimony about Secaucus. And that is interesting for this reason, and there is a division among stolid deceivers in their own testimony. How does the Secaucus job or robbery fit into the mail case? Simple. You have to put in a little ingredient, because, normally, you would never hear it, except that Crawford said these men who came from Washington, D.C., had to

be tested to determine whether they were capable of performing a robbery; they had to prove their worth; they had to prove their talents; they had to prove that they could successfully consummate a robbery. And this was just a test. So they throw in the Secaucus robbery, took the money, and I think one of them said, because I asked him if he got an A for passing the test.

Then add to it another ingredient. Let's take the Pennsylvania trip. That is thrown in. Now, I don't know what it has to do with a mail truck robbery, but it is in there, and Mr. Kenney told us that some of the men who wouldbe testifying in this case are not nice boys. He said they were not nice boys.

Let me tell you something, they are not only what he said, they are not nice, he had to reach down to the bottom of the barrel to come up with the witnesses he had here. Of course, he had no choice. Mr. Kenney had no choice. He takes his witnesses where he finds them. He can't be selective. He couldn't go to St. Patrick's Cathedral and select his witnesses there. He couldn't go to the seminary and pick them there. He had the filt that he had and he had to use it. And he had the kind of witnesses who know what to do without being told, because remember, depending on how successful, how cooperative, rather, they are in rendering this so-called testimony, they will be rewarded to the extent that their cooperation or lack of it will be brought to the attention of the court.

Isn't it also ironical that with all of these meetings at Katz' Restaurant, and mind you, if my recollection is correct, I don't know whether yours meshes with mine invariably they went to a table against the wall, and

invariably there was a table adjacent to them, but they always made sure that nobody was behind them.

First of all, why would they go to Katz'? I can only surmise -- maybe you agree with my surmise -- and it is that that was the most convenient locality for a meeting place because it was in close proximity to that house or apartment on Houston Street where Myers met with someone.

And one of the questions I think I put was, "How long did you spend there, an hour and a half, two hours, half hour, three quarters of an hour?" And they mentioned all the times that they were in that place.

There is no doubt in my mind that Chester Crawford was in Katz'. There is no doubt in my mind that Mann was there. There is no doubt in my mind that Myers was there. There is no doubt in my mind that Crawford was there. But there is a serious doubt in my mind whether Carroll was there or the McCloskeys were there, and I will tell you why, and again, I say I argue this to you within the realm of fair comment: Could these men have been in there, on all of the occasions, the many occasions that they tell us they were there, without somebody from Katz' being able to come into this courtroom and saying, "Oh, yes, I saw Tommy Carroll there"? "I saw Mike McCloskey"? "I saw Billy McCloskey there"?

Not once.

And there was a bit of evidence you might have missed. One of these pillars of society that testified in this case -- I bit my tongue again -- stated that when he entered the premises they did not go to the self-service portion of the place. He got a ticket. They get tickets, I suppose, so that they can stamp it or check it or punch it. And they were always in that one spot. Never one witness to come in and identify them. If the witness did nothing, all the witness would have to say is, "I saw him there." That doesn't happen.

Of course, we are dealing with these fellows who consonant with the agreement that they had entered into with the government have to be as effective as they can.

Now, if I sign a contract with the government or anyone else, I want to make a good impression on the man with whom I made my contract, and in order to make a good impression, I am going to do a little bit more, especially when I have a government contract. Those are the best contracts, whether they bring you monetary gain, and if they bring you a gain in terms of liberty or anything like that, the price is even higher, the stake is higher.

Please bear these things in mind while you are deliberating and determining how much credence you want to

give each of these men.

Now, again, to help put the frosting on the cake, after this ugly incident occurred, they tell us that Tommy Carroll cashed a check, and he cashed a check for $100, and he gave somebody $20 -- I think it was Chester Crawford.

Let us please draw on our common sense. If I were involved in a serious incident like this, one involving a murder -- and mind ybo, at the time that they were in that tavern, is there any doubt but that Crawford, Mann and Myers knew that the guard was dead? He borrowed $20 or got $20 from Tommy Carroll.

God Almighty, I would think the capo, the head of the family, the Irish Mafia, he'd have given him anything to get out of town.

You don't hear him do anything like that. You don't see him do anything like that.

Is it possible that after Turner got into the difficulty with his cohorts in this aborted robbery that they went to Wall's Tavern where they usually met? You can bet they did. But did it mean that these men were involved in it? Not at all. Not at all.

I say to you -- and please think about this carefully -- I venture to say one or more of you, when you are in that jury room deliberating, is going to say, when you look

at one another, maybe shake your head, "I think, I surmise, I guess, I speculate."

Let me please caution you. When you start thinking that way, and you start talking that way, then you know you are on thin ice, because his Honor will tell you that your finding in this case, your judgment in this case must not be predicated upon surmise, suspicion, speculation or guesswork.

When you do that, you are falling into an ugly trap. Please don't do it.

You are going to find from the instructions his Honor gives you that your verdict must be unanimous. All 12 of you must agree. And without invading his Honor's province -- a man for whom I have more than an abundance of respect -- he is going to tell you that no juror should be arbitrary, go into that jury room and say, "Unless you think the way I think, forget about it. Go to the other 11."

You have to listen to the arguments advanced by your fellow jurors. You just can't be stubborn and say, "No, it's going to be my way."

However, I say to you if, after you hear all the evidence in this case and you have heard all of the arguments by all of your fellow jurors, you have a reasonable doubt, if you are in the minority or if you stand alone, you must not

yield.

Then you must be stubborn, as long as you have a reasonable doubt. And I trust and hope that you will follow it. Don't yield if you have a reasonable doubt.

May I have the Court's indulgence for a minute? I start off with notes and never look at them.

(Pause.)

I think I can keep within the time limit, your Honor.

Incidentally, one other counsel had occasion to mention in his summation to be as generous as you can. I think he mentioned the Christmas spirit.

I don't want you to be generous. All I want you to do is to be honest, consonant with the oath that you took, and I state that on the oath that you took, evaluating the testimony that you will have to evaluate, applying the concepts that his Honor will give you, we seek no gifts, no gratuities, no generosity. We want a judgment predicated on the law, predicated on the concepts, and if you do it consistent with the concepts given us, I feel -- and recognize, I am a partisan; I am a partisan; I represent the defendant and I want to win and win badly; if I said otherwise I would be a liar -- but, you apply those concepts, and I say to you you cannot find these men guilty beyond a reasonable doubt.

Again, I am going to say to you, don't try to substitute yourselves for God. The wrongdoers are the wrongdoers, and they have pleaded guilty the way they should.

You heard testimony here that each of these defendants had the same opportunity. They didn't plead. They stuck by their pleas of not guilty, and refused to plead guilty to something they say they did not do, which is their right under our American system of justice. And please, don't you, by your judgment, thwart that.

Incidentally, we find in the very inception, according to Mr. Chester Crawford, that in an alleged conversation he had with Tony or Tommy -- that was his own testimony; it's not mine -- the faces were too hot and they had to import men from Washington, D.C.

Well, don't you think, consonant with the five man team which our good friend Myers gave us a real psychological work-up on -- that fellow was a bright fellow -- five man job, and when I got him down to the five man job, the explanation he gave about splits, changing from splits, and then he went into psychological and mental gyrations. Beautiful. He is learning real fast. If he sticks around long enough he is going to be as good as Turnor.

Their faces were too hot. Yet, if we believe the story, they are down at the scene, they are visiting the

area over a period of months. For what?

Then what did they need these fellows for? They could have done it themselves. Think about that. Think about it.

The mail truck. He said something about pallets or money going on it. Ridiculous. You find the trucks backed into the platform. In some instances the solid doors are closed shut with the mesh door in front of it, and he forgets conveniently that there are at least one or two guards in front of the Federal Reserve Bank. Could you imagine anyone just peeking in there like that with these guards standing there?

Never happened.

But that is part of the plan. And they got to bring in, I guess, little Willie McCloskey, who has as much right sitting at that table as I have. But that is the way they do it.

Then the man whose face is hot, Tommy Carroll, oh, nobody, nobody would ever recognize him. He looks like a mountain. Imagine him peeking over and looking in?

Incidentally, everybody at one time or another, or one or two, at least, see Tommy Carroll standing on Maiden Lane. The only one who ever puts him in a place called Lou's Tavern, I think, was Mr. Turner.

Of course, nobody was here from Lou's Tavern to say that he even saw Tommy Carroll there.

I leave you with one thought. I know at this time you are pretty much exhausted as I am. I say to you I sincerely hope that the good Lord aids you in searching for the truth, has you come up with the answer, and that I will be satisfied after you render your verdict that you don't have a reasonable doubt. If -- and I say this to you so sincerely -- if you have that reasonable doubt, please don't yield. I feel that the government has not met the burden or the responsibility that the law places upon it, and I sincerely ask you to acquit all of these defendants.

Thank you for your kind attention.

THE COURT: We will have a short recess.

(Recess.)

(Jury in the box.)

THE COURT: You may proceed.

MR. KENNEY: Thank you, your Honor.

Judge Metzner, defense counsel, Mr. Shulman, ladies and gentlemen of the jury: on April 5, 1973, at about 6:20 p.m., William Hickey was brutally murdered while he was on a job as a postal guard, and that murder was brought about by Tommy Carroll and by Mike McCloskey and by Robert Rippy. And the evidence in this case is overwhelming that that is true. We will come to Billy McCloskey in a moment.

The motive for that robbery -- and keep in mind this wasn't a planned murder -- the motive for that robbery was quite simple -- it was greed, the desire to accumulate large amounts of money without doing anything, and to accumulate it quickly.

You have seen in that mail truck there were 22 registered mail pouches. Six of those directed towards the General Post Office in New York contained shortly under $2,000,000 in negotiable securities. A large portion of those securities were bearer bonds, municipal bonds, bearer bonds, which can be negotiated just like a dollar bill.

In his opening you will recall Mr. Direnzo said, "As you sit here, now having heard that which Mr. Kenney said

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toyou"-- and I am reading from page 15 of the transcript -- "you could just as well retire to the jury room without even taking a second look. If you just listen to what Mr. Kenney said, you can do that."

There is nothing in our opening which was not proved by testimony from that witness stand and by documents which came into evidence. We did not choose the witnesses in this case. The witnesses in this case were chosen -- at least, one of the witnesses, Terry Myers, the man who did the killing, was chosen by Rippy.

Where did he get Myers? We don't know. There is no evidence as to how Rippy got Myers. But you can be sure he didn't look him up in the yellow pages or get him out of an ad.

Mr. Myers testified as to the manner in which the gun was fired by Myers, the manner in which Hickey was hot, the manner in which Myers' friend, Mann, fired all the bullets he had at the only remaining witness. This is the same Myers, the same man , Rippy sent to New York; he is the man he sent to Chester Crawford -- Robert Rippy, the same Robert Rippy that told Postal Inspector Dexter he was not worried because he knew the conspiracy was over when Myers came and told him that nothing went down.

Mr. Hafetz pointed out to you there was no

evidence of that. Of course. Myers never told Rippy that, but Rippy told the postal inspectors, "I know I am out of this." He also told the postal inspectors that he knew there was going to be a three to four hundred thousand dollar hijacking of a truck. Dexter told you that. He heard it in a conversation in June of 1973. And as Mr. Hafetz has told you, you must find, if you are to convict the defendant Rippy, that he knew it was going to be a hijacking of a truck on March 19, March 20, when he caused Myers to come to New York.

Now, Chester Crawford's testimony was vague, to say the least. He said he spoke to Rippy on the telephone and he asked Rippy to send a couple of people up for a job, and Rippy asked what kind of a job it was, and Chester didn't say on the telephone -- they don't discuss these things on the telephone.

Did Rippy know at that time there was going to be a hijacking of a truck? There are two pieces of evidence for you to consider on that point -- at least two. The first is that Rippy knew it was going to be a three or four hundred thousand dollar job; so it was not going to be a purse-snatching. The second is, Chester Crawford testified he knew Rippy for five or six years. And Mann testified Chester Crawford said they just did hijacking, they were

hijackers. He was distinguishing between hijackers and robbers at the time. It is a pretty fine distinction.

MR. HAFETZ: I'm going to object to this recounting of the testimony.

THE COURT: The jury will recall the testimony.

MR. HAFETZ: There is no mention by Mann of the defendant Rippy.

THE COURT: The jury will recall the testimony.

MR. KENNEY: This hijacker, Chester Crawford, who identified himself also as a fellow who does not do anything but hijacking, is Rippy's friend. This is the man he spoke to on the telephone; this is the man he sent Myers to. What did he think Myers was going to do in New York?

MR. HAFETZ: I will object to that as prejudicial.

THE COURT: Mr. Hafetz, the jury will recall the testimony. This is fair comment on the testimony, just as you commented on the testimony as you thought the jury should find.

MR. KENNEY: There is not any question about what Rippy did. The question is, what Rippy knew. And there is no way that we have been able to devise to this date to decide what a man knows at a given time, except to use that judgment you would all use to decide an important event or decision in your everyday life, considering the facts that

exist at the time a man makes the decision. There is not any way for us to get into Mr. Rippy's mind. We would add that there is even more testimony against Rippy, and that is that of Paul Crawford -- that Rippy called him collect duringthe commission of this crime, or on and around the 23rd of March, because he had asked him to do that, because Rippy was going to get a piece of the action.

Now, these witnesses, Myers, Mann, Chester Crawford, Paul Crawford, John Turner, are the people who were selected by the defendants. The way this crime was planned, there would be few other people to testify against the Carrolls and the McCloskeys. Stop and think for yourselves isn't the inference from the testimony to use black men from Washington to comeup and commit an armed robbery of a truck in New York, so that anybody here gets a report that two black men jumped on a truck are going to start looking around for white men? Isn't that the inference? Isn't that what Carroll is doing here?

Take a look at Carlton Boyd, the fellow that went to jail on March 11, 1973. Turner testified he first heard about this on March 15, 1973. Chester Crawford was calling down to Washington between March 15 and March 19, 1973. The point here is the way the crime was structured by the participants. There is little other evidence than the

accomplices themselves to show this jury that these men are responsible for the crime. Make no mistake about it. They are as responsible for the pulling of that trigger as Myers was. In fact, Myers is Carroll's trigger; Myers is performing this job for Carroll and the other defendants.

You may ask yourselves why the government put you through eight or nine days of repetitious testimony. The reason for that is there are at least two ways to determine whether accomplice witnesses, co-defendants, people who have pleaded guilty are now trying to help themselves, may have a motive to lie, are or are not telling the truth. The first way to do that is to have each one tell his story and simply listen to it and see where the inconsistencies lie, see what the inconsistencies are, see if there is any internal cohesion to their stories.

The second way is to go out and check it out where you can.

Let's take a look at the first way. In all of the testimony, there is little or no dispute among the five witnesses, those who have testified, that on the 20th of March, Terry Myers and Paul Crawford came to New York and met Chester Crawford on South Third Street. They drove around downtown Manhattan with Chester Crawford, and then they went to New Jersey and they stayed in the Holiday Inn

in New Jersey. Ask yourselves, as I review some, but not all of the testimony, because you heard a great deal of this already -- if this case happened exactly the way these witnesses said it did, what parts would they surely remember, what parts might they remember, what parts would they probably not remember? We submit to you that they would remember the day they committed the crime, they would remember the crime in New Jersey, they would remember the first time they met people, but they would forget if they are not consistent, times they came to New York, times that they met and didn't do anything.

Now, there is again the 21st, the night of the 21st. All of the witnesses testified that Terry Myers, Geoffrey Mann, Paul Crawford and Chester at some point went to New Jersey. They went to a bar in New Jersey, that Chester went inside and that Chester came out and got Terry Myers, and Terry Myers met with some people, either inside or outside that bar. Turner testified he knows the area better than any of the other witnesses, that Chester came into Wall's Tavern, and that they went to Iodyce's Tavern, several blocks away, and that they met outside Iodyce's Tavern with Myers and the others standing nearby on the street. The others testified that, in fact, Myers went into Wall's Tavern.

The day of the 22nd, every witness who testified about the 22nd, testified in some strength or other, that the robbery commited against Rocco DiGeorgio outside the Plaza National Bank in Secaucus was a test for Myers and Mann. Now, there is no question about the fact that Turner and Carroll and McCloskey and the others wanted to get that money as well.

The facts of that day are entirely consistent. Every witness who testified told the same story, except that Paul Crawford said they met in a diner earlier in the day, and none of the other witnesses had any such recollection.

MR. HOPPER: I'm going to object to that as being totally contradictory of the record.

THE COURT: Mr. Hopper, the jury will recall the testimony.

MR. KENNEY: Now, you recall that they met at a lot, and that the lot had a trailer on it. Turner told you the trailer was an office for Tommy Carroll's Meadowland Limousine Service. There is such a limousine service, at least, there is a bank record in Tommy Carroll's name that there is such a service. They sat there; they saw DiGeorgio's car; they went onto the Turnpike; they went on to Linden, New Jersey, they came back, and you recall the facts of the crime.

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MR. DIRENZO: With reluctance, the jury's recollection prevails?

THE COURT: Obviously. Do I have to repeat it every time one of you feels that is not in accord with the record?

MR. DIRENZO: Except that I don't recall that testimony.

THE COURT: There are a lot of things you don't recall, I'm sure.

MR. KENNEY: Now, Myers and Mann and Paul Crawford and Chester Crawford have a clear recollection of what days Myers went to Washington, the 23rd and the 29th, and what days he came back. That recollection reflects itself in Turner's testimony of when he saw Myers and what days Myers was there and when they had conversations that somebody else would try the job and so forth. It tends to show that Turner's recollection that Myers wasn't there was, in fact, a true recollection. And up to this point you have had no testimony whatsoever about Billy McCloskey.

Myers and Mann go down to Washington for the weekend, and they return on the night of the 26th, Monday night. And the first mention in the testimony that you hear about Billy McCloskey is from Chester Crawford on the 27th of March.

Now, Mr. Hopper argued that somehow, in some vague way, all these witnesses who have not met since they have been in jail, got together and decided they were going to put Billy McCloskey in this.

Let's take a look at the record on this.

March 27, 1973. Chester says that he went to Maiden Lane and he met with Jack, Mike, Tommy and Billy was there also. Nobody else testified that they saw Billy on that day. Now, at this point keep in mind that when Carlton Boyd testified that he met with Chester Crawford and Chester tried to interest him in this very mail truck robbery, there were occasions when he went to New Jersey and met Chester and Tommy Carroll and discussed the events of this crime, and Billy McCloskey was there at that time.

Now, Carlton Boyd came into the courtroom and pointed out Billy McCloskey for you, so Chester knew Billy McCloskey. But nobody else in the case knew him at that time. When Chester saw him on the 27th of March, he had known him for several months. There is no mention of Billy McCloskey on the 28th of March, which is Wednesday.

The next mention is on Thursday, the 29th. Geoffrey Mann testifies that he went to a shopping center in New Jersey, and when he got to the shopping center he met a man who was introduced to him by Mike as his brother, and

his name was Billy. You have been told in summation by some defense counsel that there was testimony from the stand that Billy was not in the courtroom. There was no such testimony, if you recall. The testimony was that Mann did not see Billy McCloskey in the courtroom, couldn't identify him. He didn't say, "I have seen everybody in the courtroom and nobody here is Billy McCloskey." He said, "I don't see him in the courtroom."

But, in any event, the first mention is the night of the 29th. Now, that is the day you will recall, that all of these defendants and witnesses went out to Pennsylvania, and Mann testified that Mike's brother, Billy, was riding in a station wagon with Mike.

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Now, onthat same day, the 29th, earlier in the day, Chester Crawford testified that when he went to Maiden Lane he met Mike and Tommy and Billy McCloskey there at Maiden Lane. So that the testimony is Chester saw Billy at Maiden Lane. Mann was introduced to him and saw him for the first time at the shopping center out in New Jersey on the way to Pennsylvania.

Myers testifies that when they went to Pennsylvania there was a young man in the stationwagon with Mike McCloskey.

Now, that is the 29th of March.

On the 30th of March, which is the first day that they have actually -- there was a full testimony about exactly how they attempted this crime, and that a car came out and they weren't able to do it, but Terry and Geoffrey Mann went down to the corner and Jack was there -- you will recall that testimony.

The first day that there is a full testimony and recollection that the crime was attempted, Mann says that he saw Billy, the same fellow that Mike had introduced as his brother.

He came to the van and he said the truck was in. That's Mann's testimony.

The same day, March 30th, Chester's testimony, Billy was at Katz's Delicatessen. Nobody else said Billy

was at Katz's Delicatessen but Chester. Billy, Jack and Tommy were in Mike's automobile on the way down to the area of the crime. And then Chester described Billy as being in that car during the rest of the crime on that day or the attempt on that day. He says that Carroll and Billy drove away and 15 to 20 minutes later Carroll and Billy returned, and Carroll said to get in position.

And later that day, when the attempt was unsuccessful or it wasn't actually attempted, Chester took Tommy and Billy to a garage, and Mike McCloskey to a garage on East 57th Street between -- West 57th Street between 11th and 12th Avenues where they picked up a stationwagon.

And Chester testifies that it was this day that they drove out to Pennsylvania, and there is some inconsistency on the witnesses as to whether it was the 29th or the 30th, but he is talking about going to pick up the stationwagon at 57th Street with Billy in the car.

Now, on the same day, Turner for the first time says he saw Billy at Katz's Delicatessen. That is the 30th.

And his description of the event on that day, the crime, attempted crime is that Tommy got in the car and drove off with no one in the car but himself, and when he

came back, 15 or 20 minutes later, he had Billy in the car, and it was Turner who testified that Billy's job was to stand outside the Federal Reserve Bank and see the mail-truck come out and report that to Tommy.

Now, Mr. Hafetz suggests to you that that is a fictitious job since there is no need for it. I would think that these hijackers, these greedy men who think that they are going to get millions of dollars from robbing a United States mailtruck, would be extremely upset to get the truck out to New Jersey and find a lot of thirdclass mail.

MR. DIRENZO: Objection. Move for a mistrial, your Honor.

THE COURT: Overruled.

MR. KENNEY: It would be necessary to find that the truck going from the Peck Slip Station was a truck, in fact, from the Federal Reserve Bank.

And the next testimony that you hear about Billy McCloskey is on April 5th, and although Myers testified it was a Monday, which would, in effect, be April 2nd. The rest of his testimony is exactly consistent with the crime. He tells you that he went down and put the gun on the window and so forth. Everyone else's testimony is Thursday, April 5, 1973, was the next time that they saw Billy, and on that day he was in the car with Tommy, and he came

back to the van and said the truck was in and so forth.

Now, how unlikely, if not impossible, is it that all of these men locked up in different places got together somehow and decided to put Billy in it. Just doesn't make any sense. How would they know what day to put him in? Here you have Chester who knows him and sees him standing there, identifying him, and other people leaving him out. How would you be able to, by telegraph, through a signal of some sort, let everybody know you were going to say he is in the car on this day and that day? It is just an incredible situation, and it isn't believable.

The fact of the matter is that he was there when these witnesses said he was, and he did exactly what they said he did.

MR. DIRENZO: Not an objection, your Honor. He is acting as an unsworn witness.

THE COURT: Overruled.

MR. DIRENZO: Move for a mistrial.

THE COURT: Denied.

MR. KENNEY: Now, it has been suggested that Mr. Turner thought this whole thing up. Well, the simple answer to that is that Carlton Boyd met with Tommy Carroll before Turner knew anything about this for the purpose of committing this very crime, and he didn't know Turner.

He didn't say Turner was there. Turner's testimony is entirely consistent with that. He says he didn't hear about this crime until the second week in March.

Did Turner know when Carlton Boyd was arrested? Did he know Carlton Boyd? There is no testimony that he even knew who the man was -- Boyd and Rogers, Dixon and those people.

What happened was, Carroll lost his first string, and so he needed a second string, and he simply went to Chester and had him call down to Washington and have Rippy send up a couple more armed bandits to try it again.

It certainly wasn't Turner who was doing it. Turner was a Johnny-Come-Lately on this scene.

And you might note at that point that when Myers was arrested on June 7, 1973, he identified pictures of Turner and Mike McCloskey, picked them out of a photographic spread.

Now, you have also seen telephone records, and the telephone records indicate that there were phone calls from Myers' house to Maria Vasquez's house and from Maria Vasquez's house in Queens to Wall's Tavern in North Bergen, New Jersey, and you have heard Mr. Wall testify, and he has told you that he knows Tommy Carroll, he has known him for six years, he is a neighbor, he lives around

the corner, and he has access to his phone, and so does Turner, and so does Mike McCloskey.

But Carroll is the only one who pays for phone calls. He is the only one who gives him money when phone calls are made.

Now, you can take a look at the government's exhibits that are the telephone bills, which are about an inch high. You can just recall Inspector Kievit's testimony as to when the phone calls were made and on what days they were made.

There were lists of phone calls. Do you think that those phone calls went unpaid for? And if not, who paid for them?

In addition to the testimony that it was in fact Tommy Carroll who was on the phone, which Chester was telling you, and the interrelationship of the phone calls having been made on the same day, which Mr. Kievit, the postal inspector, testified about, from his analysis of the bills.

Now, there has been testimony that a van was stolen on or about the 29th or 30th of March, 1973, and that testimony came from Turner, and his story was, "I was driving around with Carroll and Mike McCloskey. We decided that the stationwagon was getting hot. It was stolen. It was driven around too much and we needed another

vehicle. Just around North Bergen, New Jersey, and we saw a van, and Mike McCloskey said, 'That looks like a likely van or vehicle. Why don't you try that?'"

Tommy Carroll got out, got in the van and drove it away. And you might say to yourselves, likely story.

Well, Turner said it was stolen from the Metro Adhesive Company, and a man named Jerrold Schwartz testified that he works for the Harry Schwartz Yarn Company, that they are located at Paterson Plank Road in North Bergen, New Jersey; they are in the same building as the Metro Adhesive Company. They have a loading platform. That the Metro Adhesive Company has a loading platform, but when you go by on Paterson Plank Road you only see the sign that says Metro Adhesive Company; you would not see the Schwartz Yarn Company sign, which is a small sign down by a set of stairs.

The North Bergen Police Department say that a GMC 1967 step van, blue in color, was stolen or was reported stolen by the Schwartz Yarn Company between 5 or between 3.30 and 5 o'clock on the 30th.

Now, this obviously is the result of somebody's phone call or report of some sort to the police station, and the time may be accurate, and it may not be accurate,

depending on whether the person who reported it actually saw the van being stolen or just later found it stolen.

But the significant part of this piece of evidence is that the report of the stolen van was cancelled, and it was cancelled because the North Bergen Police Department received a call from the New York City Police Department, the 9th Precinct, saying apparently they had found this van.

Now, the 9th Precinct, you will recall that a patrolman of the New York City Police Department showed you where the 9th Precinct is. It runs along Houston Street to the East River, and to Broadway, and up to 14th Street.

Now, the van was found some place in there.

Chester Crawford testified the day the crime was committed he saw Mike McCloskey walking along Houston Street near Avenue B.

Now ask yourselves, was the van stolen? And is this the van that was used?

I submit there is no doubt at all that that, in fact, was the one that was used, and after Mike McCloskey dropped and Terry and Geoffrey off, he simply parked the van and started walking on Houston Street.

Similarly, some time between the 26th of March and the 30th of March, a blue 1973 Chevrolet stationwagon

was stolen from the Econo-Car of North Hudson, New Jersey, and Turner testified that Carroll had told him they would try to get a girl named Eyleen Holder to rent a car; they would have a key made and go back and get the car.

Checking the records of the Econo-Car of North Hudson, New Jersey, and you find that Eyleen Holder rented the car, that she returned it on or about the 26th of March, that it was not rented out again after that, and that the owner of the business found it missing on the 30th.

Now, Mr. Martin would have you believe it was stolen on the 30th. Well, the point is the woman didn't know when it was stolen. She knew it was returned on the 26th and missing on the 30th.

She also knew that it was located in Pennsylvania and that there were two towing bills, one from where the car was found to the towing place in Pennsylvani, and a second from the Pennsylvania towing place to some place where she could pick it up in New Jersey.

And we submit that that is the very car, the stationwagon, that many of the witnesses testified about and that all of the witnesses who testified it was taken to Pennsylvania and left there on or about the 29th or 30th of March, which is just either before or at the same

time that the van was taken.

Now, there has also been testimony from Myers, Mann, Chester Crawford and Turner that Carroll cashed the check the night the crime was committed in the second bar which you have come to know as the Iodyce Bar.

Only Turner was able to give us what the amount of that check was, andwe submit to you that this is very, very good proof that Carroll was the man responsible for Myers and Mann and the crew, Chester.

The reason for that is -- and again, without going over this point too many times -- Myers and Mann were people who had guns and who would use them if necessary. When Mike McCloskey would not stop that truck, Myers' testimony was he put the gun behind his head, he cocked it, and he told him to stop the van so Geoffrey could get in.

Now, is there any question in your mind that he was fooling about that?

You will recall that Geoffrey testified that he dismantled his gun and put it in a park along -- in a wastebasket in the park along the East River. Myers didn't dismantle his gun, and when he went into Wall's Tavern, he still had it with him. And when he went to Iodyce, you may find from the evidence he still had it with him. And these people had come up here at the behest of

Chester Crawford for Carroll, McCloskey and Turner, and Carroll was pretty hard-pressed to come up with something to take care of these people so they could go back to Washington. It is not unlikely at all, having asked Turner if he had any money, and he saying, "No, I don't," and he went home and got a check and cashed it, particularly, as well, considering it was 9 or 10 o'clock at night, and he was in a local bar in his home area. You can't get around that. That is excellent proof that he was right there, right there with those people.

It also shows, as these other points do, that these men, all being separated since June, and Myers and Mann testified that they haven't seen anybody in this case between April and June, are telling you exactly what happened. These are the facts, the best they can recall them.

Finally, you have seen these witnesses on the stand, and you have seen them cross-examined. You have seen Mr. Direnzo, a man of great experience and ability, cross-examine everyone of these witnesses extensively. And you have been able to watch them. And you ask yourselves, are these people telling us the facts of this case the way it happened?

Each of the witnesses may have and does have a

motive to lie and fabricate. But in contrasting their testimony against one another and against the documentary proof that you have seen, you may find and you should find beyond any doubt at all that these four men perpetrated this crime, it was their idea, and we ask you to find them guilty on each count in this indictment when you return your verdict.

Thank you.

THE COURT: We will recess till Wednesday morning at 9.30.

I think we had better go back to our room on the 11th floor because I am not sure and have been unable to find out whether this room is being used on Wednesday. So have a good holiday. We will see you Wednesday morning, 9.30, in the old courtroom on the 11th floor. That includes the alternates. We want to see you Wednesday morning, too.

(Jury left the courtroom.)

3 MR. HAFETZ: May I make a motion?

THE COURT: Yes.

MR. HAFETZ: I move for a mistrial on the grounds of Mr. Kenney's statement, one, that Rippy was a friend of Chester Crawford's. It is not supported by the evidence. But more importantly, that Chester was a hijacker and that

Frank was known to Rippy. There is absolutely no evidence in the record that Rippy knew that Chester was a hijacker.

THE COURT: Mr. Kenney.

MR. KENNEY: Your Honor, Chester Crawford testified that he had known Rippy for five or six years. Mr. Mann testified that in conversation with Chester, Chester said that he didn't commit any other crimes but hijackings. He was a hijacker. That covers the page of transcript at --

THE COURT: Mr. Kenney, in essence, says the jury may draw that inference from those facts. That is up to the jury.

MR. KENNEY: Adding to the fact, your Honor, that when Rippy sent somebody to New York, which he did, in fact, do, the man committed a hijack. It was an armed hijack.

MR. HAFETZ: Did he say Mann?

THE COURT: When he said man, he refers to m-a-n, not a person by the name of M-a-n-n.

Motion is denied.

MR. DIRENZO: If your Honor please, at this point, I think I moved for a mistrial on the very basis --

THE COURT: I denied your motion.

MR. DIRENZO: He was characterized as a hijacker, and I would like to state with more specificity that it was, rather than a characterization of the testimony, it seemed to be Mr. Kenney's stating it, and to that extent he would be acting as an unsworn witness before this jury.

THE COURT: I disagree with you. I think he was asking the jury to draw that inference from the testimony as it existed.

Yes, Mr. Hopper?

MR. HOPPER: Your Honor, I would like to ask for an instruction, not on any fair comment, direct or indirect, that Mr. Kenney made, but he made a statement that all of the witnesses testified substantially the same manner as to the Secaucus robbery. I think we all know that Turner put Harry Johnson in that robbery.

THE COURT: That is true and you brought it out to the jury.

MR. HOPPER: Yes, but for him to make this statement --

THE COURT: He said substantially the same way.

MR. HOPPER: Shouldn't there be an instruction --

THE COURT: I wouldn't instruct them. You asked me not to marshal the evidence. If you want me to do it on one, I will do it on all, Mr. Hopper.

MR. HOPPER: Can the government make a statement that we all know is false?

THE COURT: I don't think the statement is false. He said substantially.

Now, if you want me to refer to it, I will marshal all the evidence, Mr. Hopper, and you specifically asked me not to on the record, all the defense counsel.

MR. DIRENZO: There is only one request I wanted to make, your Honor. With reference to the failure of a defendant to testify, is your Honor going to use the language of the statute?

THE COURT: I will just use the one-sentence charge.

MR. DIRENZO: Can I ask your Honor what it is, please?

THE COURT: Oh, we have gone through this. I have been reading charges to you from five days ago.

"The law does not compel a defendant to take the witness stand and testify and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify."

MR. DIRENZO: It is all right with me. Thank you, your Honor.

MR. HAFETZ: I have just one other brief thing.

Thank you, your Honor.

MR. HAFETZ: I have just one other brief thing. I request that a no instruction --

THE COURT: Denied. Judge Friendly says that even if you request a no instruction it still should be given, and we have been requested by some defense counsel not to give it.

MR. HAFETZ: Not on Mr. Direnzo's point. I mean on the dismissal of the conspiracy count. The jury has never been advised.

THE COURT: I am going to advise them in the charge. I have to advise them.

MR. HAFETZ: I think they have never been told that Rippy was charged in count 1, because I think the instruction is not necessary.

THE COURT: In the first place, you summed up only on counts 2 and 3, right?

MR. HAFETZ: Right.

THE COURT: I gather -- I haven't checked the record -- that the jury was under the inference that all defendants were charged on all counts.

MR. HAFETZ: I don't believe so, Judge. You gave no instruction at the beginning.

Mr. Kenney didn't refer to any defendant named

in count 1 in his opening, and I certainly didn't, so I think it is an unnecessary instruction.

THE COURT: I don't think so. They are named in the indictment. The jury can ask for the indictment.

MR. HAFETZ: I think we could black out his name.

THE COURT: I won't do that. I think the jury is entitled to know what the facts are. I am not going to keep the truth from them.

(Adjourned to December 26, 1973, at 9.30 a.m.)

UNITED STATES OF AMERICA

v. 73 Cr. 855

THOMAS JOSEPH CARROLL, et al.

December 26, 1973
9:40 a.m.

(In the robing room.)

THE COURT: At the close of the session on Monday, Mr. Hafetz made a motion that the Court not refer to the dismissal of Count 1 against the defendant Rippy. At that time I said that I didn't have before me the transcript, but I was sure that the jury knew that Mr. Rippy had been charged in all three counts, and therefore I would have to tell them that one was dismissed.

I call your attention to my comments to the jury on the voir dire, which reads as follows: "You are being called to determine the guilt or innocence of four defendants. Three are charged in one indictment, and the fourth defendant is charged with committing the same crimes in a separate indictment. For convenience sake, both indictments are being tried together. The four defendants are Thomas Joseph Carroll, Vincent McCloskey, also known as "Mike," Robert E. Rippy, also known as "Ripp," William McCloskey, also known as "Billy." They are charged with having conspired with each other and with

John Turner," etc.

Mr. Hafetz.

MR. HAFETZ: I wasn't aware of that. I didn't recall that.

THE COURT: Secondly, Mr. Kenney, in his opening to the jury said, "Now the indictment in this case -- two indictments have been joined together for trial -- charge ten men with conspiring to rob a United States mail truck. The indictment is in three counts, and that is the first count."

So that the jury is completely aware that he was charged with a conspiracy. Therefore, I have to tell him that he is no longer in the conspiracy.

All right. I am ready to go.

MR. KENNEY: Judge, the Government has an application. Mr. Martin mentioned in his summation twice, to my recollection, perhaps more times, the legality of Mr. Kievit taking a statement and testifying to the statement.

THE COURT: I know. I was waiting for you to make some comment, but you didn't, so I wasn't going to inject myself.

MR. KENNEY: We didn't comment in our summation because we didn't know if it would be proper or not.

We would ask tha Court to charge the jury that the Court has ruled that that testimony was legal and proper.

THE COURT: I think you're entitled to it. Of course, I didn't know why you didn't take it up in summation. He opened it. He gave you a fair comment to shoot him down and if he objected, I would have even told the jury then, that the testimony was ruled proper. There was nothing illegal about it.

But I will charge it.

MR. MARTIN: If your Honor please, I don't think I said it was legal. I thought, as I remember it, I asked, would it be a natural thing for him to just go in and ask the one question. I think --

THE COURT: Oh, no, you said that he wasn't advised of his rights, he didn't have counsel present.

MR. MARTIN: I said there was no testimony to that in the record, that it was just that one facet --

THE COURT: You knew that there was testimony, absent the jury, and if Mr. Kenney here had got up at that point I would have told the jury that you know, because you did know. You made a motion to suppress it.

MR. MARTIN: I thought what I said was fair comment.

THE COURT: Fair comment on what?

MR. MARTIN: Fair comment on the testimony as given by Mr. Kievit.

THE COURT: You said that this man didn't have counsel with him, he wasn't advised of his rights, when you know that he was.

MR. MARTIN: Your Honor --

THE COURT: That's not fair comment.

MR. MARTIN: If your Honor please, as I recollect it, I said when any other statement was taken, there were signatures shown on the other defendants.

THE COURT: Right.

MR. MARTIN: I also said that nowhere in there -- I said, is it logical that he would have taken or been able to make such a statement when, in fact, there was no background given. I believe, if your Honor searches the record, that I was within the realm of fair comment and made no conclusion as to the legality --

THE COURT: Absolutely not. I was ready to stop you myself but I thought it wasn't my function to do it. And I was waiting for Mr. Kenney, because I would have told the jury that there had been a hearing on this and the Court determined that this man was adequately represented by counsel.

MR. MARTIN: If your Honor please, there had

been no hearing as such, your Honor, on this. I don't remember any hearing at all on it. I made an application --

THE COURT: You spent Saturday morning arguing with me; what do you call it?

MR. MARTIN: I made an application for a hearing.

THE COURT: What do you think you were going for an hour arguing to me in my chambers?

MR. MARTIN: I made an application for a hearing, if your Honor please --

THE COURT: That was a hearing.

MR. MARTIN: This was on the written statement. As I indicated --

THE COURT: I'm sorry, your motion papers say oral statement.

MR. MARTIN: I said any oral statement that may have been made. I was not aware of this particular statement.

THE COURT: You weren't? You specifically said November 26th --

MR. MARTIN: I said this particular statement that came in, because I was referring primarily to the other statement, to the written agreement between them. There was nothing said --

THE COURT: I will read for you your motion

papers.

No. 8: "Suppressing as evidence herein all written and oral statements which may have been made by the defendant to the U.S. Attorney's office or the FBI agents during the month of November, and particularly on or about November 26th."

Now, how can you say on the record you weren't referring to oral statements?

MR. MARTIN: I said I didn't know about this particular statement that Mr. Kievit testified to, because at this time the only --

THE COURT: Give me the answering affidavit.

MR. MARTIN: The only thing I was aware of was the fact that --

THE COURT: Give me the answering affidavit.

These papers were served upon you in my chambers on December 8th. You were summing up, as I recall it, on December 24th.

MR. MARTIN: This was in front of us that was served. I didn't have those when I made the application.

THE COURT: We're talking about what you knew on December 24th.

MR. MARTIN: This was in your chambers, your Honor, when we were arguing this very motion.

THE COURT: These papers were served on you in my chambers on December 8th. When you summed up on December 24th you knew this. I will read it to you.

Paragraph No. 6: "On November 23, 1973, McCloskey was questioned concerning the disposal of the items to be stolen from the mail truck in the present case. This questioning was in the absence of his attorney pursuant to the above agreement. It was in the presence of Kenneth Kievit and Leon Shatzel, United States Postal Service Inspectors, and your affiant. McCloskey refused to answer questions on this occasion which were unrelated to the United States mail. He stated that he wanted William Kelly, a Federal agent of the FBI, present when other offenses relating to various hijackings were discussed, but did not want the Postal Inspectors present."

Now give me the transcript of the hearing in my chambers. Isn't it out there?

LAW CLERK: No, it's upstairs.

THE COURT: At that time, at the hearing in my chambers on December 8th, Mr. Kenney said the same thing to you orally.

So, on December 24th, when you summed up, you knew this at least sixteen days.

MR. MARTIN: If your Honor please, I think Mr.

Kenney even said that he only discovered this written notation that Mr. Kievit had made several days before he got on the stand. I think Mr. Kenney said that in Court.

MR. KENNEY: I said, your Honor, that on the Friday before Mr. Kievit testified, on theFriday he testified, the Friday before Christmas, that I had asked Mr. Kievit during the trial if he had any notes himself which I had not seen about these conversations; that he brought with him, when he came in that day to testify, a sheet of paper which your Honor looked at and ruled on, as I recall. I obviously had knowledge of the statement itself substantially prior to that, as the record indicates.

THE COURT: Well --

MR. DIRENZO: If your Honor please, my feeling is, number one, if your Honor states specifically that that was a legal statement, the jury may well get the impression that the contents are accurate, and since there is a conspiracy count, and I recognize your Honor has already stated that this was only binding on the defendant McCloskey --

THE COURT: That's right.

MR. DIRENZO: -- that we, in effect, would be

accentuating something and the jury may well get the opinion that your Honor feels that the statement is an accurate one.

THE COURT: I understand that we're discussing about Larry Dalia and the disposition of the truck to Larry Dalia.

MR. DIRENZO: That's my understanding.

MR. KENNEY: That's correct.

MR. MARTIN: That's my understanding.

THE COURT: There is no written statement in the record on that. There is an oral statement.

MR. DIRENZO: There is an oral statement.

THE COURT: That's right.

MR. DIRENZO: But to that extent, to that extent that the jury has already heard that which they did hear in connection with the oral statement, they may feel that the Court is ruling that that, in fact, did happen and that the contents of the statement are true.

THE COURT: Yes. But, on the other hand, Mr. Martin has told this jury that, in his opinion, this man wasn't represented by counsel, wasn't advised of his constitutional rights, and, therefore, some illegal act took place to extract this statement from him. The opposite is true.

MR. DIRENZO: I recognize the argument, your Honor, and I can recognize the logic, but my own feeling is that it was entirely up to Mr. Kenney in his summation to meet that issue. In effect, he's using this Court now as his vocal cord --

THE COURT: Well, he would have had to anyway because if he had said --

MR. DIRENZO: -- to get in a supplemental summation on that particular issue, which I don't think --

THE COURT: It's not a summation. It's a ruling on a question of law. It's not a question of fact, number one.

Number two, if he had raised it in his summation, or if he had objected to what Mr. Martin said, I would have had to tell the jury --

MR. DIRENZO: I could see it there, but I can't see it now, your Honor, because, in effect, it's tantamount to Mr. Kenney getting up and stating to this jury that "Mr. Martin said this in his summation. I didn't cover it. I want this opportunity" -- in effect, that is what is happening.

THE COURT: I can tell them some question has been raised regarding whether the defendant McCloskey gave a statement that was properly admissible as a

question of law, and I will tell you that the statement is admissible as a question of law, but its truth or its untruth is for you to determine.

MR. DIRENZO: Except that your Honor did, in fact, receive it in evidence. The oral statement is in evidence as far as the jury is concerned.

THE COURT: Mr. Martin has told them it was an illegal statement. And I know what juries do around here when they don't like wiretapping and Kel transmitters and statements extracted from people without the full panoply of Constitutional rights.

MR. DIRENZO: Maybe that's why I'm overcautious at this point.

THE COURT: Maybe that's why I'm overcautious, too.

MR. DIRENZO: Well, the point is this: I feel, in effect, that since your Honor let it in, that is, within the realm of all legal evidence that came into the case, it is for the jury to say that. I don't think at this point this jury should be told anything about that statement. They received it in evidence. Your Honor permitted it in. That should be enough.

If we go beyond that, I fell that we're accentuating, and that is going to be detrimental to the

other defendants, although your Honor has ruled that any statement that he made would be binding only as to him, and no other defendant. This case is difficult enough as it is, without having that added burden saddled upon us.

MR. KENNEY: We respectfully disagree with Mr. Direnzo.

MR. DIRENZO: I expect you to disagree.

MR. KENNEY: Our position is it's not necessary for the Government to answer every improper issue of law or misstatement of law that is raised by a defense counsel in his summation, but, rather, we rely on the Court to correctly charge the law at the end of the case and that is exactly what we are doing.

MR. HOPPER: May I comment on that, your HOnor? Mr. Kenney made a statement about the Secaucus robbery in summation, that all of the defendants testified the same way. I think we know that is not correct.

Your Honor said to me, "Well, that's for the jury."

THE COURT: That is recollection of testimony. That is not a question of law.

MR. KENNEY: That is a question of fact.

THE COURT: That is a question of fact. We're

talking about a question of law.

Do we have the transcript of Monday morning's summations yet?

COURT REPORTER: I will check on it.

THE COURT: Will you, please? Just the morning's transcript, not the afternoon.

(Recess.)

THE COURT: I have decided to deny your request, Mr. Kenney.

MR. KENNEY: May we be heard on it, your Honor?

THE COURT: No. We have heard enough on it. Let's go; it's ten after 10:00.

(In open court; jury present.)

THE COURT: Mr. Shulman, ladies and gentlemen of the jury, I don't want you to think we were sitting around here. We had some problems we had to clear up before we called you in. They have now been cleared up, and we will proceed with the charge.

Would you lock the doors, please?

THE CLERK: Yes, your Honor.

Will the marshal please lock the door.

(Pause.)

THE CLERK: The door is locked, your Honor.

CHARGE OF THE COURT

THE COURT: Mr. Shulman, Ladies and Gentlemen of the jury:

We have now reached the point in this trial where you are about to enter upon your final function as jurors, which is, of course, one of the sacred duties of citizenship.

You have given careful attention to the evidence during the course of the trial, and I am certain that you will conduct your deliberations in the same fine spirit that you have so far displayed and with impartiality and fairness reach a just verdict in this case.

In our court system the functions of the judge and the functions of the jury are clearly defined. It is my duty to instruct you as to what the law is; it is your duty to accept the law as I state it to you.

Just as I am the exclusive judge of the law, so you are the exclusive judges of the facts.

You alone determine the credibility of the witnesses, and the weight, effect and value that should be given to their testimony.

It is up to you to determine from the evidence which you have heard what the facts are in this case, and from those facts decide whether a defendant has

violated the law.

This is a criminal prosecution in which the Government is one party and the defendants are the others.

The fact that the Government is a party entitles it to no greater and to no lesser consideration than any other party. It is entitled to the same consideration as given to the defendants, no more and no less.

This case must be decided within the scope of the charges against each defendant as contained in the indictment, but before discussing the law applicable to the charges of the indictment, let us consider some general principles which apply to every criminal case.

An indictment itself is not evidence. It merely describes the charges made against a defendant and may not be considered by you as evidence of the guilt of a defendant. Nor can the fact that a Grand Jury has found this indictment in any way detract from the presumption of innocence with which the law surrounds a defendant unless and until his guilt is proved beyond a reasonable doubt.

As the result of my rulings on motions, the charge against defendant Rippy contained in Count 1, the conspiracy count, has been withdrawn from your consid-

eration.

This disposition should not be considered or discussed by you, or influence you in any way in passing upon the guilt or innocence of Rippy on Counts 2 or 3, or the guilt or innocence of the other defendants on all counts in the indictment.

Each of the three counts in the indictment which you will consider alleges the commission of a separate and distinct offense. It will be necessary for you to reach a verdict of guilty or not guilty as to each defendant separately on each of the counts in the indictment in which he is named as a defendant.

You must consider and weigh the evidence separately as to each defendant in each count.

The fact that you may find one of the defendants guilty or not guilty of one of the offenses charged should not control or influence your verdict with respect to any other offense charged against that defendant, or to any other defendant.

Now, you have heard testimony that Terrence Myers, Geoffrey Mann, Chester Crawford, Paul Crawford John Turner and Harry Johnson have each pleaded guilty to portions of the charges contained in this indictment.

I must caution you that their pleas of guilty

should not be considered by you in any way in passing upon the guilt or innocence of any of the other defendants now on trial. The guilt or innocence of these defendants on trial should be determined by you solely from the evidence that has been presented to you on this trial.

The four defendants who are standing trial are Thomas Carroll, Vincent McCloskey, also known as "Mike," Robert Rippy and William McCloskey, also known as "Billy."

Each defendant has denied the charges in the indictment. By his plea of not guilty, each defendant has put into issue every material fact alleged in the accusations brought against him.

Accordingly, the Government, having made the charge, has the burden of proving beyond a reasonable doubt each material element of each count of the indictment.

This rule applies to each defendant, individually, as to each of the charges in the indictment. This burden of proof never shifts. It remains with the Government throughout the entire trial and during your deliberations as jurors.

A defendant does not have to prove his innocence. He is presumed to be innocent and this presumption is overcome only when you reach a conclusion from the

evidence that his guilt has been established beyond a reasonable doubt.

The law does not compel a defendant to take the witness stand and testify, and no presumption of guilt may be raised and no inference of any kind may be drawn from the failure of a defendant to testify.

Now, what is meant by a reasonable doubt? There is nothing mysterious about the term. It means, as the words themselves indicate, a doubt based upon reason and common sense which arises after consideration of all the evidence.

Reasonable doubt is a doubt which would cause reasonable persons to hesitate to act in matters of importance to themselves. It is not a vague, speculative, imaginary something, and a person may not be convicted on mere suspicion or conjecture.

On the other hand, a reasonable doubt does not exist merely because a juror does not wish to perform an unpleasant duty.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence.

A defendant may also rely upon evidence brought out on cross-examination of any of the witnesses who have testified on behalf of the Government. He may attempt to

raise a reasonable doubt in your mind as to the existence of one or more of the essential elements of the crime without affirmatively presenting his version of all or any of the facts. This is so because the law does not impose upon a defendant a duty to produce any evidence.

Now, it is not necessary for the Government to prove the guilt of a defendant beyond any possible doubt. Proof is usually not a matter of mathematical or absolute certainty. In the nature of things it cannot be; but to sustain a conviction there must be such proof as satisfies your reason as intelligent people, beyond any reasonable doubt, that a defendant is guilty as charged.

If you do not have a reasonable doubt of a defendant's guilt as to the material elements of a charge, then you should return a verdict of guilty on that count.

If, on the other hand, you do have a reasonable doubt as to the defendant's guilt as to any of the material elements of the crime charged, then you must return a verdict of not guilty as to that count.

If the evidence is susceptible of two interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant and the other to his innocence, it is your duty under

the law to adopt that interpretation or conclusion which will admit of the defendant's innocence and reject that which points to his guilt.

As you know, we are trying two indictments here, but since they charge the same offenses, I will refer to them as though the charges are contained in only one indictment.

The first count of the indictment which you will consider is the conspiracy count, and you will have to determine whether Carroll, Mike McCloskey or Billy McCloskey are guilty of this charge.

It is charged that from on or about January 1, 1973, up to and including September 11, 1973, Thomas Carroll, John Turner, also known as "Jack," Vincent McCloskey, also known as "Mike," Robert Rippy, Chester Crawford, Paul Crawford, Terrance Dewey Myers, Geoffrey Matthews Mann, Harry Johnson and William McCloskey, also known as "Billy," unlawfully, wilfully and knowingly conspired to violate Sections 1708 and 2114 of Title 18 of the United States Code.

Section 1708 makes it a crime for any person to steal and take mail bags from a mail truck.

Section 2114 makes it a crime for any person, while attempting to rob United States mail matter, to put

in jeopardy by the use of a dangerous weapon the life of any person having lawful custody or control of such mail.

Now, what is a conspiracy? It is a combination or agreement of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, and one or more of the persons who are members of the conspiracy does any act to effect or further the object of the conspiracy.

It is a partnership in criminal purposes in which each member becomes the agent of every other member, and is a crime in itself.

To prove a conspiracy here, the evidence must show, beyond a reasonable doubt, the existence of each one of the following elements:

First: That the conspiracy described was formed and existing at or about the time alleged;

Second: That it was part of the conspiracy to do either one of the following:

1. that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route, to wit, from a United States mail truck, and

2. that the defendants in attempting to effect a robbery of persons having lawful charge, custody and

control of mail matter and other property of the United States would and did put in jeopardy the lives of the said persons by the use of dangerous weapons.

The third material element that you must find beyond a reasonable doubt is: That a defendant knowingly and wilfully became a member of the conspiracy;

Fourth: That one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment, at or about the time and place alleged; and

Fifth: That such overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

Now, as to the formation of a conspiracy, it is not necessary that there be proof that the participants met together and entered into a formal or written agreement, or that they directly stated between themselves what their object or purpose was to be, or the details of the plans, or the means by which the purpose was to be achieved.

Indeed, it would be extraordinary were the members of a conspiracy to set forth all the actual details of their arrangements in a formal and written agreement.

When persons, in fact, embark together upon a

criminal conspiracy, much is often unexpressed, much is left to unwritten understanding. Generally, such a criminal conspiracy is a matter of inference, deduced from the acts and statements of the alleged conspirators.

What the evidence must show in order to establish that a conspiracy existed is that the members in some way or other positively or tacitly came to a mutual understanding to engage in a common unlawful scheme to do either of the following acts: first, that they would steal and take mail bags from a United States mail truck, or, second, that in attempting to rob the mail bags from the postal employee having custody of the mail matter, would put in jeopardy the lives of such employees by the use of dangerous weapons.

In determining whether or not there was such an unlawful agreement, you may judge the acts and conduct of each of the alleged conspirators as a whole, and the reasonable inferences to be drawn from such evidence.

If you satisfy yourself beyond a reasonable doubt that the conspiracy as alleged in the indictment existed, then you must determine as to each defendant separately whether he knowingly and wilfully was an active participant in the unlawful plan with the intention of furthering its objectives.

Mere knowledge of an illegal act on the part of some other alleged co-conspirator is not sufficient. Merely acting in a way which incidentally furthers the purpose of a conspiracy without knowledge that a conspiracy exists does not make a person a member of the conspiracy.

You may find that a defendant acted knowingly and wilfully if he acted voluntarily and purposely and with specific intent to do something which the law forbids. That is to say that he must have acted with evil motive or bad purpose to disobey or to disregard the law, and not because of negligence, mistake, inadvertance or other innocent reason.

It is obviously impossible to ascertain or prove directly what a person knew or intended. You cannot look into a person's mind and see what his intentions were or what he knew. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case, as to a person's actions and statements, enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing or not doing certain things, and the state of his knowledge.

You may not find a defendant guilty of the

conspiracy charged in Count 1 unless the Government has proved beyond a reasonable doubt that the defendant knew either that the truck that was intended to be robbed was a United States mail truck or that the persons whose lives were going to be put in jeopardy by the use of dangerous weapons were United States postal employees.

In determining whether or not a particular defendant was a member of the conspiracy, you may consider evidence of his own acts, statements and conduct, as well as evidence of the acts, statements and conduct of other alleged co-conspirators, and the reasonable inferences to be drawn from such evidence.

At this point I want to advise you that I have admitted into evidence without limitation those portions of the testimony which you heard me state during the trial were admitted with the limitation, "subject to connection." All such evidence may be considered to the extent that you give it credence in weighing the guilt or innocence of a defendant.

If a defendant or any other person, with knowledge of the specific object and purpose of a plan intentionally encourages, advises or assists the scheme, for the purpose of furthering it, he thereby becomes a knowing and wilful participant -- he thereby becomes a conspirator.

The guilt of a conspirator is not governed by the extent of his participation. It is not required that each of the conspirators participate in, or have knowledge of, all of its operations. He need not know all of the conspirators. He may join at any point in its progress and be held responsible for all that may be or has been done.

However, I must caution you that before an act or declaration can be found to have been made in furtherance of a conspiracy, it must be found to have been made when the conspiracy was in operation.

You will recall that during the course of the trial, I cautioned you that certain testimony as to statements allegedly made by the defendant Rippy to a postal inspector after his arrest were to be received only against and limited to him on Counts 2 and 3. This caution also applies to statements allegedly made by defendant Mike McCloskey to a postal inspector. They may be considered only against him on the three counts of the indictment. Under no circumstances may you consider such evidence with regard to any other defendant on any of the counts.

The indictment alleges that the conspiracy commenced on or about January 1, 1973, and continued to

September 11, 1973 -- the date the indictment was filed.

The Government, however, is not required to prove that the alleged conspiracy existed over the whole course of time set out in the indictment. It is sufficient if you find that any time within that period all of the elements of the alleged conspiracy have been proven to your satisfaction beyond a reasonable doubt.

The fact that the Government may not have proved that the conspiracy was carried on as early or as long as the indictment alleges is not of any importance so far as the elements of the crime are concerned.

The next element that must be proved on this issue of conspiracy is the requirement of an overt act. You may not find a defendant guilty of conspiracy unless you are convinced beyond a reasonable doubt that one of the conspirators knowingly committed one of the overt acts charged in the indictment.

The Government need not prove the commission of all of the overt acts charged in the indictment.

By the term "overt act" is meant any act committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. It must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the

indictment.

The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or using a telephone.

The overt acts referred to in this indictment are:

1. That on or about the 20th day of March 1973, Chester Crawford, Paul Crawford and Terrence Dewey Myers went to the vicinity of Wall Street, New York City.

2. That on or about March 22, 1973, Chester Crawford met with Thomas Joseph Carroll and Vincent McCloskey, also known as "Mike," in the vicinity of Fulton Street, New York City.

3. That on or about April 5, 1973, Thomas Joseph Carroll, John Turner, also known as "Jack," Vincent McCloskey, also known as "Mike," Chester Crawford, Terrence Dewey Myers, Geoffrey Matthews Mann, Harry Johnson, and William McCloskey, also known as "Billy," met at Katz' delicatessen on Houston Street, in New York City.

The fact that a particular defendant is not named in an overt act is of no importance because once you find that a conspiracy existed and that a defendant on trial was a member of a conspiracy, then he is bound by the acts

done and statements made by any other member in furtherance of that conspiracy, even in the absence of such defendant.

Once you have determined that the offense has been established under the guidelines I have just given you, then the crime of conspiracy is complete as to every person found by you to have been knowingly and wilfully a member of the conspiracy.

Furthermore, at this point the success or failure of the conspiracy to accomplish the common object or purpose is immaterial.

Now, Count 2 of the indictment charges that on or about April 5, 1973, the defendants on trial committed the crime of murder in the first degree in that they unlawfully, wilfully, knowingly and with malice aforethought, and in the perpetration and attempted perpetration of a robbery of United States mail matter and other Government property, did kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit,, the guarding of a United States mail truck.

Under this charge, in order to find a defendant guilty, it is not necessary for the Government to prove that he actually shot William Hickey.

In order for you to find that Thomas Carroll Vincent McCloskey, Robert Rippy or William McCloskey are guilty of the crime of first degree murder, you must be convinced as to each defendant separately that each of the following five elements has been proved beyond a reasonable doubt.

First, that on or about April 5, 1973, Terrence Dewey Myers unlawfully killed William Hickey.

Second, that at the time of the killing, William Hickey was engaged in the performance of his official duties as an employee of the United States Postal Service.

Third, that the killing was done by Myers with malice aforethought.

Fourth, that the killing was committed by Myers in the perpetration of, or attempt to perpetrate, a robbery.

Fifth, that the defendants knowingly and wilfully aided and abetted Myers in the attempted robbery of the mail truck.

In short, the Government has the burden of proving both that Myers killed Hickey during the course of the attempted robbery, and that the defendants aided and abetted him in that robbery.

I will now review each of these elements in greater detail.

The first element which must be proved beyond a reasonable doubt is that Myers unlawfully killed William Hickey. To unlawfully kill a person means to kill without excuse or justification. Under this element, the Government must prove that the deceased died as a result of a wound or wounds inflicted upon his body by a bullet from a gun fired by Myers.

Myers has testified that he shot Hickey during the course of the robbery, although he claims that the gun went off accidentally. Even if the gun did go off accidentally, that is not an excuse or justification for his act.

The second element which must be proved beyond a reasonable doubt is that William Hickey at the time he met his death was a United States Postal Service employee engaged in the performance of his official duties. I gather that there is no dispute as to the existance of this element of the crime.

The third element which must be proved beyond a reasonable doubt is that Myers killed Hickey with malice aforethought. In common parlance, "malice" signifies feelings of anger, hatred or ill will. The

law has given to the term "malice" a special meaning. "Malice" does not necessarily imply ill will, spite, hatred or hostility by the defendant toward the person killed. Rather, the law defines malice as a state of mind showing a heart without regard for the life and safety of others, a mind deliberately bent on mischief, a generally depraved, wicked and malicious spirit.

Since malice is a condition of the heart and mind, and since no one can look into the heart or mind of another, the only means of determining whether or not malice existed at the time of a killing is by inference drawn from the surrounding facts and circumstances, as shown by the evidence in the case.

For example, you may find that malice aforethought existed when the act which imports danger to another is done so recklessly or wantonly as to manifest depravity of mind and disregard of human life.

If a person arms himself with a deadly weapon and while so armed commits a felony in which another person is killed, even though accidentally, you are permitted to draw the inference of malice from his use of such a weapon, if you wish.

The fourth element which must be proved beyond a reasonable doubt is that the killing was committed in

the perpetration of, or attempt to perpetrate a robbery. The term "robbery" is defined as the unlawful taking of property from the person or possession of a person against his will by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property.

I gather that there is no dispute that Myers and Mann were engaged in an attempt to commit a robbery of the mail truck and its contents on April 5th.

Finally, you may not convict a defendant unless you have been persuaded beyond a reasonable doubt by the evidence that he knowingly and wilfully aided and abetted Myers in the attempted robbery of the mail truck and its contents.

In order,, for a defendant to aid and abet another to commit a crime, it is necessary that he wilfully associate himself in some way with the criminal venture; that he wilfully participate in it as something he wishes to bring about; and that he wilfully seek by some action of his to make it succeed.

What I have previously said about "knowingly" and "wilfully"applies equally as well here.

Mere presence and guilty knowledge on the part of a defendant that a crime is being committed is not

sufficient unless you are also convinced beyond a reasonable doubt that the defendant was doing something to forward the crime -- that he was a participant rather than merely a knowing spectator.

On the other hand, a defendant may be found to have done something to forward a crime without being actually present at the scene.

It is necessary that a participant know that the criminal venture was to rob a truck. Existence of this knowledge may be inferred from all the proof in the case. It is not necessary for the Government to prove that a participant knew that it was to be a mail truck.

Now, there is an alternate theory under which you may find that a defendant is guilty of first degree murder as charged in Count 2. This alternate theory may only be used by you in relation to the defendants Carroll, Mike McCloskey and Billy McCloskey. The guilt or innocence of defendant Rippy may only be determined on the theory of aiding and abetting, which we have just discussed.

You will recall that during the discussion of the law applicable to the conspiracy charge, I told you that a conspirator is liable for the acts and statements of his co-conspirators, provided these acts and statements

were made during the pendency of the conspiracy, in furtherance of its objectives and were within the scope of the conspiracy as the defendants saw it.

In order, , for you to find a defendant guilty under this alternate theory, you must first have found him guilty under Count 1 -- the conspiracy charge.

In addition, you must find beyond a reasonable doubt that the killing was committed by another member of the conspiracy, that it was in furtherance of the robbery, and that such act was one which the defendant might reasonably have foreseen would occur even though accidental.

If you find that these elements have been proved beyond a reasonable doubt, then you may find the defendant guilty of first degree murder, even though he did not directly participate in the acts constituting the crime charged or have actual knowledge of their commission by another member of the conspiracy.

Now, Count 3 of this indictment charges that the defendants unlawfully, wilfully and knowingly assaulted Crawford Lawrence, a person having lawful custody of the United States mail, with intent to rob, steal and purloin such mail, and in effecting and attempting to effect such robbery the defendants wounded and put in

jeopardy the life of Crawford Lawrence by use of a dangerous weapon, to wit, a .32 caliber revolver.

As I told you before in discussing Count 2, it is not necessary that the Government prove that each defendant himself actually committed all the acts charged in this count.

In order, . for you to find a defendant guilty of the charge in Count 3, you must be convinced beyond a reasonable doubt of the following four elements:

First, that Crawford Lawrence had lawful charge, custody, or control of the mail matter of the United States;

Second, that Geoffrey Mann or Terrence Myers intended to rob Crawford Lawrence of such mail matter of the United States;

Third, that in attempting to effect such robbery, either Geoffrey Mann or Terrence Myers wounded Crawford Lawrence or put his life in jeopardy by use of a dangerous weapon;

And, fourth, that the defendant knowingly and wilfully aided or abetted Myers or Mann in the attempted robbery.

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Now, as to the first element which must be proved beyond a reasonable doubt, there is no dispute that Crawford Lawrence had lawful custody on April 5, 1973, of the mail matter of the United States.

Insofar as the second element is concerned, that Mann and Myers intended to rob the mail-truck, what I have said previously about the words "knowingly," "wilfully" and "specific intent," applies equally as well here.

The third element which must be proved beyond a reasonable doubt is that Myers or Mann wounded Crawford Lawrence or put his life in jeopardy by use of a dangerous weapon. A loaded revolver is, obviously, a dangerous weapon. In order to satisfy this element, the government must prove beyond a reasonable doubt either that Crawford Lawrence was wounded, or that his life was put in jeopardy by use of a dangerous weapon. The government need not prove both.

In order for a person's life to be put in jeopardy, you must be convinced beyond a reasonable doubt that the person was actually in danger of being killed. Mere fear on the part of the person that he might be killed does not suffice. To put a person's life in jeopardy requires an objective state of danger,

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not a subjective feeling of fear.

The fourth element which must be proved beyond a reasonable doubt is that the defendant aided or abetted Myers and Mann in the attempted robbery of the mailtruck. You will recall that I described aiding and abetting for you in setting forth the law applicable to count 2. What I said there applies equally as well to all four defendants on this third count. Furthermore, the alternate theory which I described under count 2, and applicable only to the defendants Carroll and Myers and Billy McCloskey, is similarly applicable to this count as to those three defendants only.

In determining the guilt or innocence of a defendant you must decide that question solely from the evidence you heard from the stand and the exhibits that have been placed before you.

The summations of counsel which you have heard are not to be considered as evidence but only as arguments to you as to what counsel feel you should find from the evidence. Statements made by counsel in arguing the admissibility of proposed evidence and colloquies between the Court and counsel with respect to admission or rejection of such evidence are not evidence and are not to be considered by you in your deliberations.

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In determining the issues in this case, it is your recollection of the testimony that is to control and not that of counsel.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence -- such as the testimony of an eye-witness. The other is indirect or circumstantial evidence, which is proof of a chain of circumstances pointing to the existence or non-existence of certain facts. Circumstantial evidence is the proof of facts from which you may reasonably infer a material element of the crime.

Let us take one simple example to illustrate what is meant by circumstantial evidence. We will assume that when you entered the courthouse this morning the sun was shining brightly outside, and it was a clear day. There was no rain. Now, assume that in this courtroom the blinds are drawn and the drapes are drawn, so that you cannot look outside. Assume as you are sitting in this jurybox, and despite the fact that it was dry when you entered the building, someone walks in with an umbrella dripping water, followed in a short time by a man wearing a raincoat

which is wet. If you were asked whether it is raining now, you cannot say that you know it directly of your own observation. But certainly upon the combination of facts which I have stated to you, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it is raining now.

That is about all there is to circumstantial evidence. You may draw such inferences as reason and common sense lead you to draw from facts which you find to have been proven. Great care must be exercised when drawing inferences from circumstances proved in criminal cases, and mere suspicions will not warrant a conviction.

However, no greater degree of certainty is required of circumstantial evidence than is required of direct evidence. It is not on any different or lower plane than direct evidence. The law simply requires that in either case you must be convinced beyond a reasonable doubt of the guilt of a defendant.

If, during the course of the trial, the Court sustained an objection by one counsel to a question asked by the examining counsel, you are to disregard the question and any alleged facts con-

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tained in the question, and you may not speculate as to what the answer would have been.

If a question was asked and an answer given by the witness, and I have then stricken the answer from the record, you are to disregard both the question and the answer in your deliberations.

In your search for the truth, you must use plain everyday common sense. You must not be governed by sympathy, bias or prejudice. You have seen the witnesses on the stand and observed their manner of giving testimony. How did the witnesses impress you? Did they appear to be testifying frankly, candidly and fairly? In determining what degree of credit you should give a witness's testimony, you may consider his conduct, his manner of testifying, and his interest in the outcome of the trial. You should also consider his relationship to the government or the defendant, his bias or impartiality, and any motive he may have to testify falsely. It does not necessarily follow, of course, that because a person is interested in the result he is incapable of telling a truthful version of an occurrence.

You have heard the testimony of Chester Crawford, Paul Crawford, Carlton Boyd, Terrence Myers,

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Geoffrey Mann and John Turner that the defendants on trial were participants with the witnesses in the crimes alleged in the indictment. The testimony of alleged accomplices should be received with great caution and scrutinized with care. This does not mean that such testimony, if believed by you, is of any different or lesser quality than any other evidence. It should be considered by you after giving it whatever weight you think that it deserves along with all the other evidence in the case in determining whether the guilt of a defendant has been proved beyond a reasonable doubt. You may find a verdict of guilty solely on the uncorroborated testimony of an accomplice if you believe that testimony beyond a reasonable doubt.

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If you believe that a witness wilfully testified falsely to any material fact, you may disregard his testimony altogether, or you may accept that part of his testimony which you believe worthy of credence. What you accept or reject as credible evidence is for you to determine, but you may not go outside the evidence to speculate as to the facts.

The quality of the testimony of the particular witnesses, regardless of who calls them, rather than the quantity of witnesses, is the test to be used in

arriving at your decision. There is no presumption that the witnesses for the government are truthful or credible simply because they have been called by the government.

Evidence that a witness has been convicted of a crime may only be considered by you in assessing his credibility as a witness.

You should consider a witness's entire testimony -- his direct examination, his cross-examination, and his redirect examination. You should consider the strength or weakness of his recollection in the light of all the testimony and attendant circumstances in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently. Innocent misrecollection, like failure of recollection, is not an unusual experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or to an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood.

You will recall that certain witnesses were asked about statements which they made prior to trial and which it is claimed appear to be inconsistent with their testimony on this trial.

Some of the prior statements were made under oath; others were not made under oath.

If a witness at trial affirms under oath the truth of a prior statement, the earlier statement, whether made under oath or not, may be considered by you both as affirmative proof of the facts contained in it, as well as bearing on the question of credibility of the witness.

If a witness admits on the stand that he made a prior statement which was not made under oath, but he denies that the prior statement was true, you may consider the inconsistent prior statement as bearing solely on the credibility of the witness.

If a witness has denied making a prior statement which was not made under oath, then you may not consider the alleged prior statement for any purpose. You must disregard the prior statement completely.

A prior inconsistent statement which was made under oath and which was not affirmed by the witness

from the stand may be considered by you solely on the question of the witness's credibility and not as affirmative proof of the facts contained in that prior statement.

You have heard testimony concerning the participation of Carroll and Vincent McCloskey in an alleged payroll robbery outside the Plaza National Bank in Secaucus, New Jersey. The defendants are not charged, nor are they on trial here, for having committed such a crime. Neither are they on trial for stealing a stationwagon or a step van. This testimony relating to alleged prior uncharged crimes, if believed by you, may be considered only for the limited purpose of determining the scope and membership of the alleged conspiracy. You should not consider this testimony for any other purpose in determining the guilt or innocence of a defendant.

Some question has been raised about the failure to call Maria Vasquez, Harry Johnson and Larry Dalia to testify on this trial. I point out to you that these persons are not under the control of either the government or the defendants. Either side could have subpoenaed any of them to appear as a witness. Therefore, you are free to draw whatever inference

you wish as to the failure of either party to call them, or you need not draw any inference at all. As I pointed out above, a defendant need not offer any proof, and the burden is on the government to prove its case beyond a reasonable doubt. However, there is no presumption against the government from its failure to call a witness, if it appears that his testimony would be merely cumulative or repetitious, and of no greater value than that of witnesses who have testified.

You may call for any exhibits which you desire to see in conjunction with your deliberations. You may call for a reading of any portion of the official transcript of the evidence, or any portion of this charge.

You are instructed that the question of possible punishment of a defendant in the event of conviction is no concern of the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence in the event of conviction rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of a defendant solely upon the basis of such evidence.

I have sought to avoid any comments which might suggest that I have personal views on the evidence or that I have any opinion as to the guilt or innocence of any of the defendants, and you are not to assume that I have any such views or opinion. This charge is given to you solely to instruct you as to the law applicable to this case.

The actions of the Judge during the trial in granting or denying motions or ruling on objections by counsel, or in statements to counsel, or in attempting to clearly set forth the law in these instructions, are not to be taken by you as any indication of any determination of the issues of fact. These matters, the actions of the Court, relate to procedure and law. You, the members of the jury, determine the facts.

There are 12 members on this jury, and all of you must agree upon any verdict you reach as to any defendant on any count in the indictment.

This case is, obviously, an important one to the defendants; it is equally important to the government. I am submitting it to you in complete confidence that you will comply with your oath as jurors and decide the case fairly and impartially, and without fear or favor.

If there are any exceptions to the charge, I will take them in the robing room.

(In the robing room.)

THE COURT: Yes, Mr. Direnzo?

MR. DIRENZO: I object to that portion of your Honor's charge in connection with three specifically named individuals, Vasquez, Dalia and Johnson, and stating to the jury that these witnesses were equally available to both sides. My objection to that portion of the charge is predicated, first, that it had been mentioned earlier in the trial to this jury. I object to it more specifically on the ground that it impairs the impartial basic concept we have in the law that a defendant need not call a single witness in his defense.

THE COURT: Overruled.

After I mentioned that, I went on to say there is no burden on the defense to produce any evidence and the government does not have to present cumulative evidence, and under the rulings to date that is the law.

MR. MARTIN: I would like to object to your Honor's use of the name Mike McCloskey throughout the charge. I think it might lead the jury to believe he was known as Mike, instead of Vincent Francis McCloskey.

THE COURT: Denied.

MR. MARTIN: I'm going to ask your Honor to charge that if the jury disregards or decides to disregard all

of the testimony of Terry Myers because of a willful lie or if they find he made a willful lie during the testimony, that they must acquit the defendants on the second and third counts of the indictment, because I believe your Honor said that they must find Myers unlawfully and wilfully killed Hickey, and that another element was that they were engaged in an attempt to take the mail. I believe that the only testimony in the record is from Terry Myers as to the actual shooting, and I feel that if the jury was to disregard his testimony totally, there would be no evidence in the record as to the actual killing of Hickey by Myers.

THE COURT: You take the position that he was not killed?

MR. MARTIN: I am not taking that position; I'm taking the position that if the jury disregards the testimony of Myers totally, that then there is no testimony in the record concerning the fact that Myers killed him, and I'm going to ask on that basis that your Honor charge they've got to acquit the defendants on the second and third counts of the indictment.

THE COURT: Denied.

MR. HAFETZ: Your Honor, with regard to the aiding and abetting charge, Count 2, I have an exception and a request. The exception is I don't think the charge

sufficiently pointed out to the jury the need for Rippy to know they planned to rob a truck had to be on March 19th and 20th. And while there was discussion between court and counsel as to the reason for throwing out Count 1, no knowledge at that time of the mail truck to be robbed, and the Court holding Count 2 in on the ground that as to the 19th and 20th, the jury might infer he knew of a plan to rob a truck, I don't think the jury was sufficiently told that that finding must relate to those dates. Specifically, there was testimony later he knew of a plan to rob a truck. That is the exception coupled with the request.

THE COURT: Denied.

MR. HAFETZ: I don't think the aiding and abetting charge relating to Count 3 distinguished Rippy from the other defendants. It said something like what was said in regard to aiding and abetting applies here.

THE COURT: Yes, but only to 3, not Rippy.

MR. HAFETZ: I take exception on the grounds that aiding and abetting as to 3 does n sufficiantly distinguish as to Rippy as to Count 2.

THE COURT: Overruled.

MR. HAFETZ: Also, I take exception to the Court's statement that there were six witnesses who testified that the four defendants were participants. The Court named

Meyers, Mann, Turner, Paul Crawford, Chester Crawford and Carlton Boyd. Only three of those witnesses mentioned Rippy. I think the inference is the other three mentioned or inferred he was a participant. I think that creates a misleading impression in the jury's mind.

THE COURT: I think it is sufficient.

MR. HAFETZ: Also, I don't believe I heard the Court give an instruction in regard to accomplice testimony, of the necessity for considering that testimony with great care and caution.

THE COURT: That was in there.

MR. HOPPER: With reference to the equal availability of witnesses, that we could have called Johnson equally as well as the government, I don't think really that is factually true. When they call a witness they can offer him immunity; they can promise him if he testifies it will be made known to the Court. We can't offer those things. In a real sense, I don't think he was really as available to us as he would have been to the government if the government wanted to call him.

THE COURT: I think on the record as it stands today the charge was proper. If you had tried to call him, that would have been a different question. But as you sit today, no. You could have given him a subpoena. If he came

in and said he was going to take the Fifth, in such cases I have said he was equally unavailable to both sides.

But you didn't try to bring him in.

MR. MARTIN: I would like to make one more exception. I think your Honor's charge relating to the fact that they must find that Myers shot Hickey maliciously excludes from the province of the jury the fact that whether or not Myers did, in fact, shoot Hickey. I think this is a finding by your Honor and tantamount to an instruction by your Honor that Myers in fact shot Hickey. I think it is going into the province of the jury. It is a fact, and the jury has to find it.

THE COURT: You are the only one in this whole courtroom, I think, who disputes the fact that Myers shot Hickey.

MR. MARTIN: That is a finding for the jury.

THE COURT: I don't think I have unfairly set it forth.

MR. MARTIN: I think the jury theoretically must find this as a fact. If they exclude all of Myers' testimony they can't find it. I think by your Honor's charge you are telling the jury, in essence, that the only question they have got to find about Myers is whether or not he did this maliciously or accidentally. That is my understanding of it.

MR. HAFETZ: I have one other thing written down. With regard to the conspiracy count I would ask that the evidence that came in which was admitted as to Rippy on the conspiracy count not be admissible.

THE COURT: All that testimony affects him on the aiding and abetting. There is no distinction between the two.

MR. HAFETZ: Judge, if I can just take one second to renew that point on the dates --

THE COURT: No, you have made your point on the record. We have disposed of it.

MR. KENNEY: The government would renew its request denied earlier that the Court charge in a more general way that you consider the evidence that has been admitted at trial and the evidence was admitted properly as a matter of law.

THE COURT: Denied.

MR. DIRENZO: Are we allowed to make requests to charge?

THE COURT: Yes.

MR. DIRENZO: In discussing and advising the jury and instructing them on the question of reasonable doubt, you did mention to them that they must exclude with moral certainty --

THE COURT: I specifically overruled that request

contained in Mr. Martin's requests, because Judge Friendly said you don't give it in this circuit.

MR. DIRENZO: The other request I have is that your Honor instruct the jury that the testifying defendant witnesses in this case are interested witnesses.

THE COURT I don't have to do that. I described an interested witness. I also specifically spoke about accomplice testimony. They know who I am talking about.

MR. DIRENZO: I respectfully request that the jury be instructed that in evaluating the evidence that the number of witnesses called to support a contention urged by the government is not controlling, that the test of the quality of the test is the quality of the testimony, as distinguished from the quantity.

THE COURT: I think my charge adequately covers it.

MR. DIRENZO: I didn't think it did.

This one I want clear-cut in the record. I know what your Honor's finding is going to be, the ruling. I ask your Honor to charge the jury that malice aforethought, which is an ingredient and material element in the crime of murder, requires a specific intent or a pre-conceived intent to bring about the unlawful killing of a human being. I ask the Court to charge the jury that the jury must find that

even as an aider and abetter, each defendant had to meet this definition. I would ask your Honor to charge that in this case there has been testimony by a government witness that the killing of the postal guard was accidental.

THE COURT: Denied.

MR. DIRENZO: Those are my requests.

MR. MARTIN: I would like to join in Mr. Direnzo's requests and exceptions.

THE COURT: I will state on the record each defendant has adopted the motions and requests and exceptions of the others.

(Proceedings continued in open court.)

THE COURT: Swear the marshals.

(Marshals sworn.)

THE COURT: At this point, Mrs. Adamson and Mrs. Melendez, you will be excused with the thanks of the Court. You are not to join in the deliberations by your colleagues. Would you go back to Room 109, please? Thank you. If you have anything in the jury room, will you go in and get it now.

(Alternate jurors excused.)

MR. DIRENZO: May we approach the bench, your Honor?

(At the bench.)

MR. DIRENZO: I think it was covered in your charge, but can they be told now that any exhibits they want --

THE COURT: I said it once.

MR. DIRENZO: I was not sure about it. Thank you, your Honor.

(In open court.)

THE COURT: Ladies and gentlemen of the jury, you may now retire to the jury room and start your deliberations.

(The jury retired to commence its deliberations at 11:15 a.m.)

THE COURT: I would assume that if the jury requests any of the exhibits counsel can agree amongst themselves without my presence.

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(Notes received from jury at 12:00 Noon.)

(Court Exhibit No. 1 marked.)

(In open court; jury present.)

THE COURT: Mr. Shulman, ladies and gentlemen of the jury, I have received two communications from you.

One reads, "May we have your statement regarding the charges for each count," and "May we have the testimony of Chester Crawford."

Now, we don't give you the charge. I will read it to you.

And if you will designate the portions of Chester Crawford's testimony that you'd like read back to you, that will be done, too.

Yes, Mr. Shulman?

THE FOREMAN: Will it be done here in Court or in the jury room?

THE COURT: Right here; that is the procedure.

So I will now reread to you the portions of the charge dealing with each count, and then I will excuse you, and you can then designate what portions of Mr. Crawford's testimony you want read. I assume you don't want the whole thing read.

THE FOREMAN: No.

(The Court reread the Charge to the jury, starting with the words "The first count of the indictment which you will consider is the conspiracy count," and ending with the words, "Furthermore, the alternate theory which I described under Count 2, and applicalbe only to the defendants Carroll, Mike McCloskey and Billy McCloskey, is similarly applicable to this count as to those three defendants only.")

THE COURT: And that completes the reading of the portion of the charge dealing with the specific acts.

If you will let me know what portions of Chester Crawford's testimony you would like reread, we will read those back to you.

You may retire to the jury room.

(Jury left the courtroom at 12:55 p.m. to resume deliberations.)

THE COURT: I suggest we recess for lunch and return by 2:00 o'clock.

MR. HAFETZ: Your Honor, is it my understanding that they are going to come right back? I'm not clear.

THE COURT: If they come back, I will tell them we recessed for lunch and we will answer their question after lunch, 2:00 o'clock.

(The following took place in the robing room at 3.20 p.m.)

THE COURT: I have a communication from the jury which reads: "May we have the testimony of Chester Crawford for the day of April 5th, including the cross-examination; also, the testimony of Jack Turner, including cross-examination.

"Thank you."

I am going to return this to the jury asking them whether they want Jack Turner in full, or only for April 5th.

MR. DIRENZO: What does the note read, your Honor?

THE COURT: "May we have the testimony of Chester Crawford for the day of April 5th, including the cross-examination; also, the testimony of Jack Turner, including cross-examination."

I think they want April 5th.

MR. DIRENZO: It may well be.

THE COURT: I don't know. So I am going to ask them is there any specific date?

MR. DIRENZO: That is all right with me.

THE COURT: Mr. Martin?

MR. MARTIN: Whatever the jury says.

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THE COURT: The question is, do you object to my sending the note back?

MR. MARTIN: Not at all.

MR. HOPPER: May I be heard on that? I can't read the jury's mind. If they were specific as to Crawford for the 5th, the failure to be specific as to Jack Turner may mean they want all of his testimony.

THE COURT: I am going to ask them, because we are not going through all the testimony of Turner if they want only the 5th. It was obvious when they sent the note in before lunch they didn't want all the testimony of Crawford. In fact, I don't believe they wanted the whole charge read; it is obvious they wanted only portions of it from their indications. So I am going to ask them, "Please specify what portions of Turner's testimony you wish read back."

Give that back to the jury.

(Note sent back to the jury.)

THE COURT: Now, as far as Chester Crawford is concerned, there is no problem in picking up his direct on the 5th, because that went through in regular fashion, from page 256, line 16, to 269, line 22.

Mr. Kenney, I would like you to check to see if there is any further direct examination that you

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think should go into that.

However, when we come to the cross-examination, that makes it much more difficult, and I think since you have daily copy there, that you let me know, and I will go through this while you go through it as to what portions of the cross you want read.

MR. DIRENZO: I think that is agreeable.

MR. MARTIN: I want the whole cross read, because I think it interlocks.

THE COURT: I won't do that. They ask for cross-examination as to his testimony of April 5th. That is all they asked for and that is all they are going to get.

MR. DIRENZO: We will have to concentrate on everything we asked on the 5th and the 5th alone.

MR. HAFETZ: Your Honor, I have mine, page 375, the bottom question, and the answer continues over to page 376, line 6.

THE COURT: It has nothing to do with April 5th.

MR. HAFETZ: It encompasses April 5th. It is an all-inclusive question.

THE COURT: That is not what they asked for. They want cross-examination regarding April 5th.

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That is all you want?

MR. HAFETZ: Yes.

THE COURT: All right.

The answer from the jury in response to a clarification on the testimony of Turner reads as follows: April 5th, including cross-examination.

Are you ready to put anything on the record?

MR. DIRENZO: Not all of it.

THE COURT: Why don't you hold it. Just mark it off and we will get to you.

I have gone through Mr. Martin's cross-examination and I find the following pages cover his cross-examination regarding April 5th:

Page 2888 line 15, to 291, line 12.

MR. MARTIN: If your Honor please, I think that goes to 293. We are talking about the day in question, whether the bookkeeper kept any records.

THE COURT: You are asking about other days he took off besides April 5th?

MR. MARTIN: I am asking if there are any records kept of that day and who would have the records. He said Mrs. Wiggins.

THE COURT: I don't see anything in 292

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that goes to April 5th.

MR. MARTIN: Your Honor, this carries over to 293. There are a series of questions on 293 as to who would keep the records, the bookkeeper keeping the records.

THE COURT: That goes to the question of the records, whether he was paid for that day. There is nothing on 292.

MR. MARTIN: "Q Did you ever tell your boss you were off?

"A Well, the days I would be off, I didn't come to work, we didn't have enough work to last all day, we would send everybody home.

"Q Did you make any records or did your boss?

"A I am sure my boss did.

"Q You are sure your boss would have records of any time you were not working during the month of March, 1973?

"A I am quite sure."

THE COURT: Then I will add page 292, line 19, through page 239, line 12.

The next one I have is 319, line 5.

MR. MARTIN: Your Honor, I have 317, because on the board he can through the path twice on Beekman

Street; one was for March 30th and one was for April 5th. It is line 14 on page 317, and continuing from that point on, your Honor:

"Q I mean, a lot of what you testified to that happened this morning, you weren't there for each and every act that you testified to, were you?

"A I was there everytime that I testified. I couldn't testify if I wasn't.

"Q When you were over at that diagram this morning, you ran through a path ending on Beekman Street twice.

"Do you remember that testimony?"

THE COURT: Hold it. I don't think anything on 317 or 318 comes in. I think you start at page 319, line 5, through page 321, line 2.

MR. MARTIN: I think it takes it out of context.

THE COURT: I don't.

The next is page 321, line 14, through page 322, line 9, and that completes the cross-examination by Mr. Martin regarding April 5th.

MR. MARTIN: My next one is on 325.

THE COURT: What is there on 325? Where is there an answer?

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MR. MARTIN: Actually we started up above that, "And you didn't see it in April of 1973?" This is on 325.

THE COURT: "A Beekman and William.

"Q Yes. Without looking at the chart, sir, if you please."

And the rest is colloquy between you and me.

MR. MARTIN: Your Honor, it also says on page 236, you say, "And he's answered it."

And I say: "I haven't heard it, if your Honor please.

"The Court: He says he never walked down it, he doesn't remember driving through it, and he doesn't know what's on the block."

That is an answer to April 5th.

THE COURT: But there is no answer of the witness.

MR. MARTIN: You said he answered it.

THE COURT: That was prior, a number of pages prior to it. You said he never went down it; he never was on it.

What do you have, Mr. Hopper?

MR. HOPPER: On Chester Crawford, I have

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pages 384, beginning with line 12, through the bottom of 386.

THE COURT: Mr. Kenney, is there any objection to that?

MR. KENNEY: No.

THE COURT: Mr.Direnzo?

MR. DIRENZO: Page 363, line 18, through 365, the last two questions on page 365.

THE COURT: At what line do you want it to end?

MR. DIRENZO: On line 8, because that is followed with that Pennsylvania trip, and that was before the 5th.

THE COURT: Is that all you have?

MR. DIRENZO: That is all.

There were some preceding questions that start at page 362. I would respectfully ask your Honor to look at that and see whether it does not fall within part of the context of the plans for April 5th.

THE COURT: Where do you want me to read from?

MR. DIRENZO: Starting at page 362, line 15, or beyond that, rather, line 21.

THE COURT: That is not in it.

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MR. KENNEY: We object to reading any testimony suggested by Mr. Direnzo. As to 362 through 365, that relates to Mr. Direnzo's question, but getting back to this, there is no testimony in the record that there was any such conversation on April 5th, and the only thing that ties it to April 5th is Mr. Direnzo's question.

THE COURT: That is overruled.

MR. MARTIN: May I ask, at the bottom of page 336 to the beginning of 337 there are two questions and answers that I believe are relevant.

THE COURT: What page?

MR. MARTIN: 336 to 337, starting at the bottom of 336.

THE COURT: I will give you 336, line 25, to 337, line 3, and 337, line 16, through line 19.

That takes care of Chester Crawford.

Where does Turner start?

MR. KENNEY: I believe 1442 is the beginning.

THE COURT: That is not the 5th?

MR. KENNEY: I think that is the beginning of the 5th, your Honor.

THE COURT: This is the time of the switch?

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MR. DIRENZO: That is the following day.

THE COURT: That is not the 5th? 1442, line 23?

MR. KENNEY: That is right. It goes up to 1459, line 12, I guess, or perhaps line 9.

THE COURT: Line 12, "Not that I can recall."

MR. KENNEY: Yes.

MR. HOPPER: On line 17 --

THE COURT: That is after April 5th.

Who is the first cross-examiner?

MR. MARTIN: I am, your Honor.

THE COURT: Where do you start with your cross-examination?

MR. MARTIN: 1474.

THE COURT: Where do you start on April 5th?

MR. MARTIN: 1479. I am just going through it.

THE COURT: I don't think 1479 deals with the 5th.

MR. MARTIN: 1474, about the gun, the first question.

THE COURT: That is in, 1474, line 3, to line 17.

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1483, line 2, is out because you withdrew the thing.

MR. MARTIN: About the gun?

THE COURT: Yes. It goes from 1483, line 2, to line 8 -- no, to line 6.

MR. KENNEY: Is that going to be read or not read?

THE COURT: The only portion being read are lines 2 through 6.

Page 1483, line 25, to page 1484, line 9.

MR. MARTIN: 1491 through 1515.

THE COURT: 1491, line 8, to page 1497, line 4.

Page 1506, line 2, --

MR. MARTIN: On page 1502, line 11:

"Q Now, you testified, I believe, yesterday" --

THE COURT: -- "at one point that you came to a stop sign at the hospital during one of those days."

I don't know what day you are referring to.

MR. MARTIN: April 5th.

THE COURT: They have asked for the 5th specifically, and that is what I am letting in.

MR. MARTIN: 1505.

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THE COURT: 1505 is stricken because you say at the top of page 1506, "I'm sorry."

MR. MARTIN: Where is that, your Honor?

THE COURT: You are asking him:

"Q And do you remember marking an A at the corner?"

And I point out it was not his A.

MR. MARTIN: I asked him, "Do you remember testifying that after this incident happened on April 5th, that you came up to the corner?"

THE COURT: You are referring to the A. Read the next question and answer. It was not his A.

MR. MARTIN: He says, "That's correct."

THE COURT: You are trying to pin him down to where the A was marked, and it was not his A. You say, Mr. Martin, "I'm sorry." Then you come to line 3, which I am putting in.

MR. MARTIN: Are you putting in all that portion about the bus on 1506 right through?

THE COURT: Yes, to page 1515, line 10.

MR. MARTIN: 1517 next, line 14.

THE COURT: Yes.

MR. MARTIN: That would be to the beginning of page 1519, your Honor, line 5.

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THE COURT: I think I will stop at line 2.

MR. MARTIN: Page 1532. I think the context starts early in the page. I am specifically referring to the question on 14, but I think some of the questions on the page might better set the setting for it.

THE COURT: I will start at page 1532, line 6, to line 18.

You have no objections, I gather, Mr. Kenney, to the pages we indicated with Mr. Martin?

MR. KENNEY: Not at this point.

THE COURT: What do you mean, "Not at this point?" This is the only time you got.

MR. KENNEY: I have no objection to the cross that has to be reread for Mr. Martin. I may have to Mr. Hopper.

THE COURT: Page 1547, line 21, through --

MR. HOPPER: The bottom of that page is one segment.

THE COURT: It keeps on going to 1548.

MR. HOPPER: To the bottom of page 1548.

THE COURT: 1548, line 25.

MR. HOPPER: Then it jumps to 1555, line 4, and it runs through 1561, line 3.

THE COURT: Mr. Kenney?

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MR. KENNEY: No objection, your Honor.

THE COURT: Line 3 ends on a question.

MR. HOPPER: I am sorry, line 5.

THE COURT: Mr. Hafetz, do you have any?

MR. HAFETZ: No, I have no cross.

THE COURT: Mr. Direnzo?

MR. DIRENZO: Page 1567, lines 17 through all of 1568.

THE COURT: What is your next page?

MR. DIRENZO: 1570, your Honor, line 3.

THE COURT: What has that to do with the events of April 5th?

MR. DIRENZO: Insofar as the arrangement with the government is concerned.

THE COURT: I think no. This has nothing to do with the cross-examination of the witness on April 5th.

MR. DIRENZO: Page 1571, line 21, your Honor.

THE COURT: I will let that in.

MR. KENNEY: Did your Honor put that in?

THE COURT: Yes.

MR. KENNEY: That relates to Pennsylvania.

THE COURT: No.

MR. KENNEY: Sure.

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MR. DIRENZO: The hijacking is about this case.

THE COURT: The top part relates to Pennsylvania.

MR. DIRENZO: What about the hijacking?

THE COURT: I remember that testimony. I said it was all about this hijacking.

MR. KENNEY: The question is:

"Q Well, you worked for that trucking company, didn't you? Wasn't Werner the company that had that particular truck? Or am I in error?

"A I believe you are in error.

"Q But, in any event, your assignment, together with the people you were working with, was to hijack an over-the-road truck?

"A That is basically the idea.

"Q You know an over-the-road truck goes over State lines?"

THE COURT: Wait a second. Mr. Kenney is right. It is obvious when you get to 1573 that you are talking about Pennsylvania. You say on 1574:

"Q When you returned from Pennsylvania, that was some time before April 5th."

You are talking about Pennsylvania there,

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not the events of April 5th.

MR. DIRENZO: Now, on page 1574 --

THE COURT: You are still talking about Pennsylvania.

MR. DIRENZO: "Q And there were times between the time that you returned from Pennsylvania and April 5th that you were alone, right?

"A That is right.

"Q You even testified that you went home to sleep on several occasions, you were by yourself; correct?

"A That's correct.

"Q Did you communicate with the agent who was giving you this money and explain to him about this little mischievous deed of yours?"

THE COURT: Meaning Pennsylvania.

Then you come up to 1575, line 6.

MR. DIRENZO: Yes, line 6. I think I am entitled to all of 1575, your Honor.

THE COURT: No, because you are asking him when he first found out. The cross-examination is as to what happened on April 5th, not what he knew on March 19.

MR. DIRENZO: In connection with what happened

on April 5th, he didn't communicate any of this information to the United States Government, to-wit, the hijacking of a mailtruck. I think that is clearly within the purview of the April 5th testimony.

THE COURT: I disagree with you. I will give you page 1575, line 6, to line 10.

MR. DIRENZO: You say I am not entitled to that question?

THE COURT: No, because I don't interpret that as the purport of the jury's question. They ask for the direct examination of the transactions, of what happened on April 5th.

MR. DIRENZO: He said if he had the opportunity he was going to put the money in his pocket.

THE COURT: That has nothing to do with it. The whole trial, the 1700 pages of testimony, deals with the April 5th robbery.

MR. KENNEY: Your Honor, I think we are entitled to have read that portion of our redirect which relates to the events on April 5th, and they are on 1589 and 1590.

THE COURT: That is what he hoped to do if it came about.

MR. KENNEY: That is true, but it is certainly

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irrelevant as to the 5th.

THE COURT: That is what he was supposed to do, but he didn't do it. I interpreted that for Mr. Direnzo and I interpreted it for you.

MR. KENNEY: I think your Honor has included a question Mr. Direnzo asked Chester Crawford about a conversation.

THE COURT: "Did you have a conversation on that day?" That is April 5th. And you are asking, "What were you supposed to do if this happened?" It didn't happen.

MR. KENNEY: Turner here is testifying as to what roles, in fact, the people played.

THE COURT: No, what they were supposed to play.

MR. KENNEY: Somebody drove a van --

THE COURT: That is in the testimony already on direct.

MR. KENNEY: I think we would be entitled to have that read.

THE COURT: I disagree with you.

Bring the jury in.

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(Note received from jury at 3:00 p.m.)

(Court's Exhibit No. 2 marked.)

(4:10 p.m.: In open court; jury present.)

THE COURT: Mr. Shulman, ladies and gentlemen of the jury, the Court has received a communication from you which reads as follows:

"May we hear the testimony of Chester Crawford for the day of April 5th, including the cross-examination. Also the testimony of Jack Turner, including cross-examination."

Pursuant to my inquiry, you indicated that you wished the Jack Turner testimony limited only to April 5th.

The court reporter will now read the portions of the testimony which have been culled from the record during the past hour so it could be read to you.

(The court reporter read the following testimony to the jury:

Testimony of Chester Crawford:

Direct Examination by Mr. Kenney:

Page 256, Line 16 - Page 296, Line 22.

Cross-Examination by Mr. Martin:

Page 288, Line 15 - Page 291, Line 11.

Page 292, Line 19 - Page 293, Line 12.

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Page 319, Line 5 - Page 321,Line 2.

Page 321, Line 14 - Page 322, Line 9.

Page 336, Line 25 - Page 337, Line 3.

Page 337, Line 16 - Page 337, Line 19.

Cross-Examination by Mr. Direnzo:

Page 363, Line 18 - Page 365, Line 8.

Cross-Examination by Mr. Hafetz:

Page 375, Line 23 - Page 376, Line 6.

Cross-Examination by Mr. Hopper:

Page 384, Line 12 - Page 386, end.

Testimony of John Turner:

Direct Examination by Mr. Kenney:

Page 1442, Line 23 - Page 1459, Line 12.

Cross-Examination by Mr. Martin:

Page 1474, Line 3 - Page 1474, Line 17.

Page 1483, Line 2 - Page 1483, Line 6.

Page 1483, Line 25 - Page 1484, Line 9.

Page 1491, Line 8 - Page 1497, Line 4.

Page 1506, Line 3 - Page 1515, Line 10.

Page 1517, Line 14 - Page 1519, Line 2.

Page 1532, Line 6 - Page 1532, Line 18.

Cross-Examination by Mr. Hopper:

Page 1547, Line 21 - Page 1548, Line 25.

Page 1555, Line 4 - Page 1561, Line 5.

Cross-Examination By Mr. Direnzo:

Page 1567, Line 3 - Page 1568, Line 25.

Page 1575, Line 6 - Page 1575, Line 10.

THE COURT: All right, you may retire.

MR. KENNEY: May we approach the bench first?

THE COURT: You may.

T3 (Jury returned to the juryroom at 5.30 p.m. to continue its deliberations.)

MR. KENNEY: Your Honor, in Mr. Hopper's cross-examination, 1556, Mr. Hopper asked what the five people were supposed to do. Our redirect at 1589 is directly in response to that, and I think it is unfair to the government not to have it read.

THE COURT: What page are you referring to in Mr. Hopper's examination?

MR. KENNEY: 1556, your Honor, starting at line 19.

THE COURT: What do you think ought to be read?

MR. KENNEY: 1589, the government asked the same question, what were these people supposed to do, and he gives his answers. It starts at line 18 on 1589, perhaps line 11.

THE COURT: Bring the jury back.

MR. KENNEY: It goes to line 16.

MR. DIRENZO: May I note my objection to bringing the jury back at this time, only because it would seem to accentuate the redirect.

THE COURT: I made a mistake; I should have included it, Mr. Direnzo.

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MR. DIRENZO: Except that the jury asked for direct and cross, not redirect examination, and if I read this correctly, it is on redirect.

THE COURT: That is right. He is entitled to it, Mr. Direnzo.

I have another note from the jury here which reads, "Would you please reread for us the second count, which is the murder count.

"Also, can you clarify the fifth part of the murder charge."

MR. HAFETZ: In that regard, the fifth part, I would again ask that the section that relates to the defendant Rippy specifically relate to March 19 and 20.

THE COURT: Denied.

Ask the jury to come back.

(The jury took its place in the jurybox at 5.35 p.m.)

THE COURT: Before I answer your next inquiry, I will ask the court reporter to read to you part of the redirect examination by Mr. Kenney.

(The reporter read from page 1589, line 5, through 1590, line 15.)

MR. DIRENZO: It seems ambiguous to me.

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THE COURT: It is perfectly clear. The government frames its question based on Mr. Hopper's question.

MR. DIRENZO: Note my objection.

THE COURT: I now have another communication from you which reads, "Would you please read for us the second count, which is the murder count; also, can you clarify the fifth part of the murder charge. I will reread my charge concerning count 2.

(The Court again read from its charge previously given to the jury.)

THE COURT: That completes the charge regarding count 2.

You have asked that I clarify the murder charge. It's very difficult for me to clarify it, if I don't know what it is that is bothering you. I have told you what the law provides regarding aiding and abetting, and what we called the alternate theory which is applicable only to the defendants Carroll, Billy McCloskey and Mike McCloskey. If you want clarification, I think you would have to form it for me in a question, so I know what is bothering you, and then I am in a better position to answer it. But I can't clarify it in general terms, because I

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have charged you what the law tells me I have to charge you.

You may retire.

THE FOREMAN: I think you have answered most of the questions. Thank you.

(The jury again retired to the juryroom at 5.45 p.m.)

THE COURT: Counsel, it is now quarter to six; I was going to ask the jury whether they want dinner brought in, or whether they want to go out. Is that agreeable to counsel?

MR. DIRENZO: It is agreeable to the defense.

(A note to the jury from the Court was marked Court's Exhibit 4.)

(The jury went to dinner at 6.30 p.m. and returned at 7.35 p.m.)

(The following took place in the robing room at 8.25 p.m.)

THE COURT: I have a letter from the jury as follows:

"Under the aiding and abetting theory, does a man to be found guilty of murder have to have knowledge of the specific crime involved, specifically,

a truck to be robbed."

And I am going to answer that as follows:

"The answer to your question is a defendant may be found guilty of murder in this case if you find beyond a reasonable doubt that he aided and abetted the commission of the robbery with knowledge that a truck was to be robbed. It is not necessary that he know the specific type of truck. Thus, he may be found guilty even though he did not know that a mailtruck was to be robbed."

MR. HAFETZ: Judge, I am going to object to that. The answer to the question seems to me is yes or no. The answer is no.

THE COURT: The answer is yes.

MR. HAFETZ: That he has to know?

THE COURT: They asked specifically a truck. I will put it this way. Let me reread it:

"Under the aiding and abetting theory, does a man to be found guilty of murder have to have knowledge of the specific crime involved, specifically, a truck to be robbed."

Now, on my direct charge to the jury I thought I made it clear that all he had to know was that a truck had to be robbed; he didn't have to know

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that it was a mailtruck, and I will reread that to you in case you have forgotten. I have read it to the jury twice. It reads as follows:

"It is necessary that a participant know that the crime venture was to rob a truck. The existence of this knowledge may be inferred from all the proof in the case. It is not necessary for the government to prove that a participant knew that it was to be a mailtruck."

And when I read it, I emphasized the word "mail." Because of their use of the words "specific crime involved, specifically, a truck to be robbed," I have a little fear that they may not be clear on this.

MR. HAPETZ: Could I ask you to reread your answer that you are going to read to the jury?

2

THE COURT: The answer to your question is a defendant may be found guilty of murder in this case if you find beyond a reasonable doubt that he aided and abetted the commission of the robbery with knowledge that a truck was to be robbed. It is not necessary that he know the specific type of truck.

At this point I will interject, because of the use of the words "specific crime involved,

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specifically, a truck," I think that I have to go further and say, "Thus, he may be found guilty even though he did not know that a mailtruck was to be robbed." Now, this is really no different from what I have told them on direct.

MR. HAFETZ: I would ask that you say to be found guilty they have to find that he knew a truck was to be involved.

THE COURT: Well, there are other factors involved in count 2.

MR. HAFETZ: I am focussing on that specific element as to the type of crime.

THE COURT: What do you want me to say?

MR.HAFETZ: For you to find a defendant guilty on that element of the question you have to be convinced beyond a reasonable doubt that he had specific knowledge that a truck was to be robbed.

MR.DIRENZO: I am listening, but I don't agree with Mr. Hafetz.

THE COURT: Put it on the record.

MR. DIRENZO: I am concerned at this point, because I can't read the jury's mind. But it would seem to me that from the inquiry they are making they might possibly be entertaining the thought that

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the defendants knew a truck was going to be robbed, without knowing that it might be a mailtruck.

THE COURT: That is what I think they are asking.

MR. DIRENZO: That is what I think. Now, if that is the case, isn't there a question of federal jurisdiction attaching to the particular crime?

THE COURT: The courts have held that as long as you know you are engaging in a criminal venture to rob a truck, the fact that it turns out to be a mail-truck is your tough luck. They have done that several times in the last couple of months. They have done it on matters of interstate commerce; they did it on the assault of a federal officer. If you intend to beat a man up and he turns out to be a federal officer, that is your tough luck. If you intend to rob a truck, the fact that it turns out to be a mailtruck is your tough luck. That is clear.

MR. DIRENZO: The crimes charged in the indictment charge specifically a mailtruck. We start off, if we take the government's proof at its best, with a job. Assuming that we get this information in Washington, D.C., that there is going to be a job, and there is some question about a truck being involved,

it could be an entirely different crime other than this particular one.

THE COURT: That is true.

MR. DIRENZO: Without these defendants knowing that it was going to be anything connected with a mailtruck, a mail robbery, a postal guard.

THE COURT: I think this is directed against the defendant Rippy, not against other defendants. They clearly had knowledge that it was to be a mail-truck.

MR. MARTIN: I think it is broader than that; I think it encompasses all the defendants.

THE COURT: How can it?

MR. MARTIN: Because of the conversations, especially when the jury requested the conversations of Crawford and Turner, there was not much said, especially about a mailtruck.

THE COURT: That is not why they asked for Crawford and Turner. They had heard Myers and Mann.

MR. HAFETZ: I think it is Rippy. Maybe it is the late hour, but I don't think your original charge gave the answer.

THE COURT: What is the difference between this and the original charge?

MR. HAFETZ: Something about "may" like it is one of an alternative.

THE COURT: Don't you want it that way? I will make it stronger, if you want me to.

MR. HAFETZ: Will you read it?

THE COURT: I think this is as soft as I can make it.

The answer to your question is a defendant may be found guilty of murder in this case if you find beyond a reasonable doubt that he aided and abetted the commission of the robbery with knowledge that a truck was to be robbed; it is not necessary that he know the specific type of truck. Thus, he may be found guilty, even though he did not know that a mail-truck was to be robbed.

MR. HAFETZ: Okay.

MR. KENNEY: Satisfactory to the government.

THE COURT: I will change it.

MR. HAFETZ: No.

MR. DIRENZO: Your Honor has been very patient with us, and we are all a little bit tired. But that is neither here nor there. Mr. Hopper requested an opportunity that maybe we could talk to one another

a little bit.

THE COURT: Sure, go ahead.

(Mr. Direnzo and Mr. Hopper leave the robing room and return.)

THE COURT: What did you talk about outside?

MR. DIRENZO: We are satisfied that your Honor is going to charge the way you are going to charge.

THE COURT: I will listen to you.

MR. DIRENZO: We don't agree with you. I made my point, right or wrong. That is the position I take, and I am going to stay with it.

THE COURT: Well, I thought Mr. Hopper wanted to speak to you on another basis of objecting, but if not, we will proceed.

MR. DIRENZO: If Mr. Hopper has anything to add, he can, but that basically is it, your Honor.

THE COURT: Bring the jury in.

(Proceedings continued in the courtroom with the jury in the box at 8.40 p.m.)

THE COURT: Mr. Schulman, ladies and gentlemen of the jury, you sent a note which reads as follows:

"Under the aiding and abetting theory, does a man to be found guilty of murder have to have

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knowledge of the specific crime involved, specifically, a truck to be robbed."

I thought I made myself clear in my original charge, but I will read to you in amplification perhaps:

The answer to your question is, a defendant may be found guilty of murder in this case if you find beyond a reasonable doubt that he aided and abetted the commission of the robbery with knowledge that a truck was to be robbed; it is not necessary that he know the specific type of truck. Thus, he may be found guilty, even though he did not know that a United States Mail-truck was to be robbed."

Does that answer your question? Thank you. You may retire to continue your deliberations.

(The jury retired to continue its deliberations.)

(The note of the jury was marked Court's Exhibit 5.)

3 (The jury took its place in the jurybox at 9.30 p.m.)

THE CLERK: Ladies and gentlemen of the jury, will you please answer as your name is called.

(The clerk called the role of jurors.)

THE CLERK: Mr. Foreman, have you agreed upon a

verdict?

THE FOREMAN: Yes, we have.

THE CLERK: How do you find as to the defendant Thomas Joseph Carroll as to count 1?

THE FOREMAN: Guilty.

THE CLERK: Count 2?

THE FOREMAN: Guilty.

THE CLERK: Count 3?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to the defendant Vincent McCloskey as to count 1?

THE FOREMAN: Guilty.

THE CLERK: Count 2?

THE FOREMAN: Guilty.

THE CLERK: Count 3?

THE FOREMAN: Guilty.

THE CLERK: How do you find as to the defendant Robert Rippy as to count 2?

THE FOREMAN: Not guilty.

THE CLERK: Count 3.

THE FOREMAN: Not guilty.

THE CLERK: How do you find as to the defendant William McCloskey as to count 1?

THE FOREMAN: Not guilty.

THE CLERK: Count 2?

MR. FOREMAN: I am sorry. Repeat the last name.

THE CLERK: How do you find as to the defendant William McCloskey as to count 1?

THE FOREMAN: Guilty.

THE CLERK: Count 2?

THE FOREMAN: Guilty.

THE CLERK: Count 3?

THE FOREMAN: Guilty.

THE CLERK: Ladies and gentlemen of the jury, you say you find the defendant Thomas Joseph Carroll guilty as to count 1, guilty as to count 2, guilty as to count 3;

You also say you find the defendant Vincent McCloskey guilty as to count 1, guilty as to count 2, guilty as to count 3;

You say you find the defendant Robert Rippy not guilty as to count 2 and not guilty as to count 3;

And you further say you find the defendant William McCloskey guilty as to count 1, guilty as to count 2, guilty as to count 3, and so say you all?

THE FOREMAN: Yes.

THE COURT: Do you want the jury polled?

MR. DIRENZO: I would ask the jury be polled.

(The jury was polled by the clerk.)

THE COURT: Ladies and gentlemen, you have listened very carefully to the testimony adduced at this trial, which lasted over two weeks; you stayed late sometimes so the testimony could be completed, but despite that you paid very close attention to do what our system calls for, a careful evaluation of the testimony. That is reflected in the questions you put to the Court while you were deliberating on your verdict in this case. You have done your duty as you promised to do under your oath, and that is all that our system of justice is about.

Are they excused?

THE CLERK: They are excused from any further service. I have their discharges.

THE COURT: You are excused from any further service; you are excused with the thanks of the Court. If you will retire to the juryroom, the marshals will make arrangements for your transportation home. Thank you.

THE CLERK: These are the certificates of service. Will you distribute them while in the juryroom?

THE COURT: You may go back.

(Jury discharged.)

THE COURT: Are there any motions?

MR. DIRENZO: Your Honor, might I respectfully request of the Court that on behalf of the defendant Thomas Carroll that I be afforded the opportunity to reserve my motions with reference to the verdict in this case until the date of sentence?

THE COURT: I will do that, provided you give written notice to the Court by January 23 of what your motions are about. I am not going to rule on them off the top of my head.

MR. DIRENZO: January 23?

THE COURT: You submit a written application.

MR. MARTIN: May I have the same right?

MR. HOPPER: Also, myself?

THE COURT: All motions reserved to day of sentence; written motions to be filed with the Court January 23; sentence will be on January 25 at 10.00 a.m. in this courtroom.

I want a presentence report on all defendants.

What is the bail situation?

MR. KENNEY: Your Honor, the bail on Mr. McCloskey is $25,000, I believe, only $10,000 in cash. We ask that that bail be vacated and that William McCloskey be remanded in light of the mandatory life sentence to be imposed.

THE COURT: That is granted.

MR. KENNEY: Also, the bail as to Vincent McCloskey and Thomas Carroll be vacated and no bail be set.

THE COURT: That application is granted. It doesn't make any difference, actually.

MR. DIRENZO: I think it is almost academic.

MR. KENNEY: May I make application of the Court to have Mr. Rippy's writ satisfied at this time?

THE COURT: Yes, granted.

MR. DIRENZO: I will have the motions in at the time designated by the Court. I may run into a little problem -- I hope I don't. I have been directed to commence a trial in Orange County, City of Los Angeles, on the 14th of January. It is a multiple-defendant case, and I sincerely hope I can be through with that case by that time. But I will have my motions in by the date designated, as directed by your Honor. There is, let's say, a remote possibility that I might not be here on the 25th. I will have someone come in to represent me or make application to adjourn his sentence.

THE COURT: I couldn't adjourn it too much, because then you change appeal dates.

MR. DIRENZO: If I am not here at that time, I assure you it shouldn't be much beyond that date.

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Hopefully, I should be here before that. There may be no problem at all. Thank you, your Honor.

- - -

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Murray Tabasz

Official Court Reporter
U. S. District Court

Michael Mardiney

John H. Kuppel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN,

Defendants.

73 CRIM. 583

INDICTMENT

73 Cr.

U.S. DISTRICT COURT
FILED
JUN 14 1973
S.D. OF N.Y.

The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the day of the filing of this indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "MIKE," ROBERT E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1708 and 2114 Title 18, United States Code.

2.a It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized depository for mail matter, in violation of Section 1708, Title 18, United States Code.

JUDGE FELD
JUN 14 1973

2.b It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and other property of the United States, would and did wound and put in jeopardy the lives of the said persons by the use of dangerous weapons.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHESTER CRAWFORD, PAUL CRAWFORD and TERRENCE DEWEY MYERS went to the vicinity of Wall Street, New York, New York.

2. On or about the 22nd day of March, 1973, CHESTER CRAWFORD met with THOMAS JOSEPH CARROLL and VINCENT MC CLUSKEY a/k/a "MIKE" in the vicinity of Fulton Street, New York, New York.

3. On or about the 5th day of April, 1973, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", CHESTER CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, met at Katz's Delicatessen, Houston Street, New York, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

On or about the 5th day of April 1973, in the Southern District of New York, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "MIKE," ROBERT E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants,

:vk

unlawfully, wilfully and knowingly and in the perpetration and attempted perpetration of a robbery in violation of Title 18, United States Code, Section 2114, did kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111, 1114 and 2)

COUNT THREE

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "MIKE," ROBERT E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, unlawfully wilfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States, and in effecting and attempting to effect such robbery, did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States Code.)

Michael J. Burke
FOREMAN

PAUL J. CURRAN
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By Eec Beck
Deputy Clerk

JUN 20 1973

Application by the Govt to recall the Bench Warrant as to Paul Crawford is granted.

Mehrer. J.

JUN 25 1973

Application by the Govt to recall the Bench Warrant as to Robert E Kiffey is granted

Mehrer. J.

73 CRIM. 583

Form No. USA-33s-274 (Ed. 9-25-58)

2261

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN,

Defendants.

INDICTMENT

Title 18, United States Code, Section 371

Title 18, United States Code, Sections 1111, 1114 and 2

Title 18, United States Code Sections 2114 and 2.

PAUL J. CURRAN
United States Attorney.

A TRUE BILL

Foreman.

FPI—SS—1-13-70—30M—4925

U.S. DISTRICT COURT
FILED
JUN 14 1973

JUDGE METZNER

JUNE 14, 1973. DEFTS - ROBERT E. RIPPY & PAUL CRAWFORD, B/W ORDERED
PALMIERI, J.

JUNE 15, 1973. DEFTS. PAUL CRAWFORD and JOHN DOE, A/K/A "JACK" B/W ORDERED
PALMIERI, J.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature] Deputy Clerk

JUN 18 1973 Defts Thomas J. Carroll — Bail $200,000.
Vincent McCluskey - Bail $200,000.
Chester Crawford - Bail $250,000.
Terrence Myers - To be assigned counsel by Mag.
Geoffrey Mann " " " " "

Court directs a plea of Not Guilty on for each deft. (5 named above) all 5 defts remanded in lieu of bail. Case assigned to Judge Metzner.

JUN 19 1973 Application for reduction of bail on behalf of Vincent McCluskey is denied following argument.

Metzner

DISTRICT COURT
FILED
JUN 20 1973
S. D. OF N. Y.

United States v. Thomas Joseph Carroll, et al., 73 Cr. 583

Defendant Vincent McCluskey has moved to reduce the bail of $200,000 previously fixed by Judge Wyatt.

The movant is one of eight defendants who are charged with the murder of a postal employee while he was engaged in the performance of his duties (18 U.S.C. §§ 1111 and 1114). The crime is a serious one for which the maximum punishment in case of conviction is life imprisonment. While the defendant is married and has four children, the government has indicated to the court that he has a girl friend living in the Bronx with whom he spends considerable time. In fact, it was through the Bronx address that they were able to locate the defendant. Furthermore, the government represents that the movant is one of the main defendants.

Prior to the recent Supreme Court decision, the offense was punishable by death, in which case the provisions of 18 U.S.C. § 3146, et seq. did not apply. In my opinion, the possibility of life imprisonment with the representations by the government of the defendant's involvement and the defendant's obvious lack of regard for his family ties amply justify the conditions imposed

by Judge Wyatt.

The application is denied.

So ordered.

Dated: New York, N.Y.
June 19, 1973

Charles L. Metzner
U. S. D. J.

USA-33s-106A - AFF. FOR W/H/C AD PRC
Ed. 3/23/57

JJK:bj

2264a

JUN 28 10 21 AM '73
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- : AFFIDAVIT

ROBERT RIPPY a/k/a "Ripp", : 73 Cr. 583

ID No 1326615, :

Defendant :

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

Ret. 6/25/73

JOHN J. KENNEY, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York; that he has charge of the prosecution of the above named case; that the defendant Robert Rippy a/k/a "Ripp", has been indicted by the Grand Jury for the Southern District of New York for the unlawful conspiracy to rob a United States mail truck in violation of Section 371, Title 18, United States Code, and for other crimes.

The indictment was filed in the United States District Court for the Southern District of New York on June 14th, 1973. The defendant is now confined in Lorton Correctional Institute and Reformatory on a charge of violating an unknown statute and his confinement will terminate at an unknown time.

JJK:bj

That the case is now on the calendar of the United States District Court for the Southern District of New York for arraignment and it is necessary that the defendant appear and plead to the indictment.

WHEREFORE, your deponent respectfully prays that a writ of habeas corpus ad prosequendum issue, directing the Warden of said Lorton Correctional Institution, Lorton, Virginia and the United States Marshal for the Southern District of New York to produce the above named defendant in the United States District Court for the Southern District of New York, Room 35, United States Court House, Foley Square, New York, N. Y., at 10:00 A.M. on Monday, June 25th, 1973, and after the said defendant has been discharged or convicted and sentenced on said indictment, to return him to the said institution.

John J. Kenney

JOHN J. KENNEY
Assistant United States Attorney

Sworn to before me this
19th day of June, 1973

Raymond Hasel

REMAND

2266a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	CR. No 73 CR 583
vs	Title 18
	Sec 371, 1111, 1114, 2114 & 2
THOMAS JOSEPH CARROLL	OFFENSE: conspiracy to steal U.S. mail and jeopardize the lives of postal employees. Murder of postal employee. Assault on postal employee
Defendant	

PRESENT:
THE HONORABLE Inzer B. Wyatt
U.S.D.J.

Court directs entry of not guilty plea.

On the motion of the United States Attorney, bail is fixed in the Sum of $200,000.00----------

ORDERED that the prisoner be remanded to the Custody of the United States Marshal in lieu of bail.

AN EXTRACT OF THE MINUTES

6-18-73

Raymond F. Burghardt
~~THOMAS B. ANDREWS~~
Clerk of Court

by L. Swanigan
DEPUTY CLERK
SOUTHERN DISTRICT OF NEW YORK

~~54~~ tet 59

U.S. MARSHAL, SDNY.
ORIGINAL
(Cri
(Rev. 4/56) 6/18/73

REMAND

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	CR. No 73 CR 583
vs	Title 18
	Sec 371, 1111, 1114, 2114
VINCENT McCLUSKEY, a/k/a Mike	OFFENSE: conspiracy to steal U.S. Mail. Murder of postal employee. Assault on postal employee.
Defendant	

U.S. DISTRICT COURT FILED JUN 3 1973 S.D. OF N.Y.

PRESENT:
THE HONORABLE Inzer B. Wyatt
U.S.D.J.

Court directs entry of not guilty plea.

On the motion of the United States Attorney, bail is fixed in the Sum of $ 200,000.00--------

ORDERED that the prisoner be remanded to the Custody of the United States Marshal in lieu of bail.

AN EXTRACT OF THE MINUTES
June 18, 1973

Raymond F. Burghardt
~~THOMAS C. ANDREWS~~
Clerk of Court

by L. Swanigan
DEPUTY CLERK
SOUTHERN DISTRICT OF NEW YORK

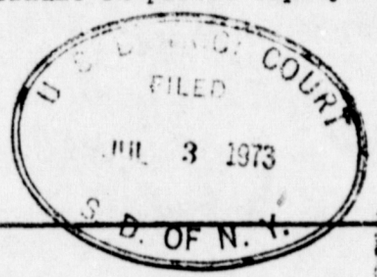
60

U.S. MARSHAL, SDNY.
ORIGINAL
(Cri
Rev. No
6/18/73

REMAND

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	CR. No 73 CR 583
vs	Title 18
	Sec 371, 1111, 1114, 2114
CHESTER CRAWFORD	OFFENSE: conspiracy to steal U.S. Mail. Murder of postal employee. Assault on postal employee.
Defendant	



PRESENT:
THE HONORABLE Inzer B. Wyatt
U.S.D.J.

Court directs entry of not guilty plea.

On the motion of the United States Attorney, bail is fixed in the Sum of $ 250,000.00----------

ORDERED that the prisoner be remanded to the Custody of the United States Marshal in lieu of bail.

AN EXTRACT OF THE MINUTES
June 18, 1973

Raymond F. Burghardt
~~THOMAS F. ANDREWS~~
Clerk of Court

by L. Swanigan
DEPUTY CLERK
SOUTHERN DISTRICT OF NEW YORK

63

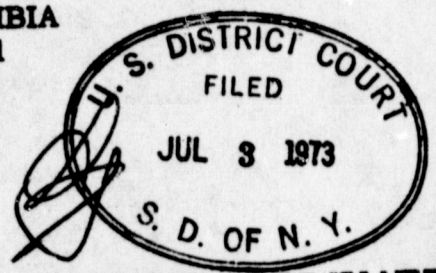
U.S. MARSHAL, SDNY.
ORIGINAL
Crim
Reg. No. 6/18/73

73 CR 583

2269a

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
WASHINGTON, D.C., 20001

June 28, 1973



JUDGE [illegible]NER

Hon. John Livingston, Clerk
U.S. District Court
United States Courthouse
Foley Square
New York, New York 10007

Re: Paul Crawford - MD 30-1313-73
Terrence D. Myers MD 30-1271-73
Geoffrey M. Mann - MD 30-1271-73

Dear Sir:

Enclosed please find Magistrate's papers in the above matter. The papers were sent here by Hon. Lawrence S. Margolis, U.S. Magistrate from Washington, D.C., and they include the following:

- ✓ Record of Proceedings in Criminal Cases (3 Copies)
- ✓ Indictment (1 Copy)
- ✓ Warrant of Removal on Indictment
- ✓ Complaint
- ✓ Magistrate's Warrant of Arrest
- ✓ Bail Agency Report (2 Copies)
- ✓ Warrant of Removal on Complaint or Information (4 Copies)

Please acknowledge receipt of same on enclosed letter.

Very truly yours,

JAMES F. DAVEY, Clerk

BY: Ethel B. Johnson
DEPUTY CLERK

Encl.

~~tel~~ 62

CJA 20 Appointment & Voucher for Representation Services — Approved by U.S. Treasury — August 1971

2270

APPOINTMENT AND AUTHORITY TO PAY DEFENSE COUNSEL

IN UNITED STATES ☐ MAGISTRATE ☒ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF: vs. Jeffery Mathews Mann

FOR

AT

LOCATION NUMBER: 11

DOCKET NUMBERS: Magistrate | District Court 73 Cr 583 | Court of Appeals

VOUCHER NUMBER

PROCEEDING (describe briefly)

CHARGE/OFFENSE (describe if applicable & check box →) ☒ Felony ☐ Misdemeanor

U.S. or other code citation ▶

1 ☒ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

PERSON REPRESENTED (Show full name & status, & check box →)

Name already appears as ☐ Pl or as ☒ Df above

COURT ORDER

☐ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization named below

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate: M Metzner Date 7/11/73

OR BY ORDER OF THE COURT

(Clerk or Deputy)

U.S. DISTRICT COURT FILED JUL 19 1973 S. D. OF N. Y.

FOR SERVICES & EXPENSES VOUCHERED BELOW

* TIME SPENT	DATES	HOURS	AMOUNT
I IN OPEN COURT			
A. ARRAIGNMENT &/OR PLEA			RATE PER HR $ — HOURS TIMES RATE
B. MOTIONS & REQUESTS			
C. BAIL HEARINGS			
D. SENTENCING			
E. TRIAL			
F. REVOCATION HEARINGS			
G. APPEALS COURT			
H. OTHER (Specify below)			
TOTAL "IN COURT" HOURS			▶ $
II OUT OF COURT			
A. INTERVIEWS & CONFERENCES			
B. OBTAINING & REVIEWING RECORDS			
C. LEGAL RESEARCH & BRIEF WRITING			
D. INVESTIGATIVE & OTHER WORK (Specify)			
E. TRAVEL TIME (during normal office hours only): (1) TO & FROM COURT (round-trips under 1 hr not allowed) (2) OTHER TRAVEL TIME (Specify)			
TOTAL "OUT OF COURT" HOURS			▶ $
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME			▶▶ $
III ITEMIZED EXPENSES (Specify, per instruction sheet)			AMT. PER ITEM $
TOTAL ITEMIZED EXPENSES			▶ $
TOTAL COMPENSATION & EXPENSES			▶▶ $
DEDUCT AMOUNTS PREVIOUSLY PAID IF APPLICABLE			
NET AMOUNT CLAIMED			▶▶▶ $

* If more space is needed use additional blank sheets

ATTORNEY/PAYEE

Yes / No

Yes / No

DATE

AMOUNT CERTIFIED/APPROVED

DATE

JUDGE — Payment in excess of statutory limitation approved under 18 USC 3006A(d) (3) — AMT. APPROVED $

DATE

COUNSEL ☐ IS A PRIVATE ATTORNEY ☐ IS FURNISHED BY: ☐ COMMUNITY DEFENDER ORGANIZATION ☐ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. WO 2-0625

VOUCHER NUMBER ▶ 67190

ATTORNEY
ORGANIZATION
ADDRESS

ROBERT MITCHELL
51 CHAMBERS
N.Y.C
ZIP CODE 10007

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

Copy 5—Filed in court clerk's office as soon as appointment made

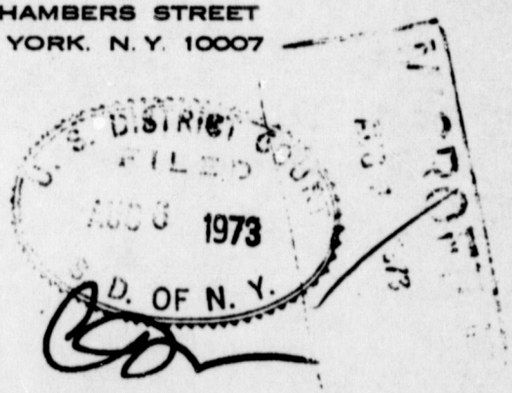
63

Read by Har A 2271a
8/4/73 WORTH 2-9675 1145A
NK

MEMO. ENDC SED

ROBERT MITCHELL
ATTORNEY AT LAW

51 CHAMBERS STREET
NEW YORK, N.Y. 10007



Hon Charles M Metzner
U.S Courthouse
New York N.Y.

Re U.S v Jeffrey M Mann
73 Cr 583

Dear Judge Metzner,

Would you please consider the motion made by Mr Mogel on behalf of the defendant Terrence D Meyers, as if it were also made on behalf of Jeffrey M Mann. as the nature of the charges and items are similar as to both defendants.

Yours respectfully,
Robert Mitchell

8/2/1973

August 1973 This motion is granted
So ordered. Charles M. Metzner
64 U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 CRIM. 603

- x

UNITED STATES OF AMERICA :

-v- : INDICTMENT

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, : 73 Cr.

Defendants. :

- x

U.S. DISTRICT COURT
FILED
JUN 19 1973
S.D. OF N.Y.

JUN 19 1973

The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the day of the filing of this indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1708 and 2114, Title 18, United States Code.

2.a It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized depository for mail matter, to wit, from a United States mail truck in violation of Section 1708, Title 18, United States Code.

2.b It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and other property of the United States, would and did put in jeopardy the lives of the said persons by the use of dangerous weapons.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHESTER CRAWFORD, PAUL CRAWFORD and TERRENCE DEWEY MYERS went to the vicinity of Wall Street, New York, New York.

2. On or about the 22nd day of March, 1973, CHESTER CRAWFORD met with THOMAS JOSEPH CARROLL and VINCENT McCLUSKEY a/k/a "MIKE" in the vicinity of Fulton Street, New York, New York.

3. On or about the 5th day of April, 1973, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", CHESTER CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, met at Katz's Delicatessen, Houston Street, New York, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

On or about the 5th day of April 1973, in the Southern District of New York, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD,

TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants unlawfully, wilfully, knowingly, with malice aforethought and in the perpetration and attempted perpetration of a robbery in violation of Title 18, United States Code, Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111, 1114 and 2)

COUNT THREE

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, unlawfully wilfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States, and in effecting and attempting to effect such robbery, did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States Code.)

Thomas M. Burke
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

By Eva Becker
Deputy Clerk

and the A.U.S.A present plead Not Guilty.
il as to (Carroll) fixed at $ 200,000.
il as to (McClusky) fixed at $ 200,000.
l as to (Chester Crawford) fixed at $ 250,000
lendants remanded in lieu of bail. JF

defendants Terrence D. Myers and Geoffrey M.
ne atty present - Representing Mr Mann (Temporary) was Mr M. Mogel - with the A.U.S.A
sent plead not Guilty
il as to (Myers) fixed at $ 250,000
il as to (Mann) fixed at $ 250,000
lendants remanded in lieu of bail.

Metzner JF

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

2276

THE UNITED STATES OF AMERICA

vs.

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN,

Defendants

INDICTMENT

73 Cr.

United States Attorney.

A TRUE BILL

Foreman.

FFL—GS—1-12-70—20M—4926

U.S. DISTRICT COURT
FILED
JUN 19 1973

JUDGE METZNER

June 20, 1973

The defendant Paul Crawford with his atty and the A.U.S.A present pleads Not Guilty.

Bail - $35,000.00

Defendant remanded in lieu of bail.

Metzner.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By _____ Deputy Clerk

JUN 25 1973

The defendant Robert E Rippy with his atty and the A.U.S.A present, pleads Not Guilty.

Defendant remanded in lieu of bail.

The defendants Thomas J. Carroll, Vincent

CJA 20 Appointment & Voucher for C...

Approved by U.S. Treasur... 1971

2277a

APPOINTMENT AND AUTHORITY TO PAY DEFENSE COUNSEL

IN THE CASE OF ☐ UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

U.S.A. vs. [redacted]

FOR [redacted]

AT [redacted]

LOCATION NUMBER: [redacted]

PROCEEDING (describe briefly): [redacted]

CHARGE/OFFENSE (describe if applicable & check box →) ☐ Felony ☐ Misdemeanor

[redacted]

U.S. or other code citation ▶ 18 USC 1708 and 2114

1 ☐ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

DOCKET NUMBERS
Magistrate
District Court: 73 Cr. 606
Court of Appeals

PERSON REPRESENTED (Show full name & status, & check box →)

[redacted]

Name already appears as ☐ PI or [redacted] of above

VOUCHER NUMBER: 135856

COURT ORDER

☒ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization named below

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate: [redacted] Date: 6/20/73

OR BY ORDER OF THE COURT: [redacted] (Clerk or Deputy)

FOR SERVICES & EXPENSES VOUCHERED BELOW

* TIME SPENT	DATES	HOURS	AMOUNT
I IN OPEN COURT			
A. ARRAIGNMENT &/OR PLEA			RATE PER HR $ — HOURS TIMES RATE
B. MOTIONS & REQUESTS			
C. BAIL HEARINGS			
D. SENTENCE HEARINGS			
E. TRIAL			
F. REVOCATION HEARINGS			
G. APPEALS COURT			
H. OTHER (Specify below)			
TOTAL "IN COURT" HOURS		▶	$
II OUT OF COURT			
A. INTERVIEWS & CONFERENCES			$
B. OBTAINING & REVIEWING RECORDS			
C. LEGAL RESEARCH & BRIEF WRITING			
D. INVESTIGATIVE & OTHER WORK (Specify)			
E. TRAVEL TIME (during normal office hours only): (1) TO & FROM COURT (round-trips under 1 hr not allowed) (2) OTHER TRAVEL TIME (Specify)			
TOTAL "OUT OF COURT" HOURS		▶	$
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME		▶▶	$

III ITEMIZED EXPENSES (Specify, per instruction sheet) — AMT. PER ITEM

	$

TOTAL ITEMIZED EXPENSES ▶ $
TOTAL COMPENSATION & EXPENSES ▶ $

* If more space is needed use additional blank sheets

DEDUCT AMOUNTS PREVIOUSLY PAID IF APPLICABLE
NET AMOUNT CLAIMED ▶▶▶ $

U.S. DISTRICT COURT FILED JUN 21 1973 S.D. OF N.Y.

ATTORNEY/PAYEE

[redacted] ☐ Yes ☐ No

[redacted] $

[redacted] ☐ Yes ☐ No

[redacted] DATE

[redacted] AMOUNT CERTIFIED/APPROVED $

[redacted] DATE

[redacted] Payment in excess of statutory limitation approved under 18 USC [redacted] AMT. APPROVED $

[redacted] DATE

COUNSEL { ☒ IS A PRIVATE ATTORNEY
IS FURNISHED BY: ☐ COMMUNITY DEFENDER ORGANIZATION
☐ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. [redacted]

VOUCHER NUMBER ▶ 135856

ATTORNEY
ORGANIZATION
ADDRESS

[redacted]
JOSEPH T. [redacted], ESQ.
[redacted], FERRARO & ZUCKER
401 Broadway
New York, N.Y. 10013

ZIP CODE [redacted]

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

Copy 5– Filed in court clerk's office as soon as appointment made

66

...0 Appointment & Voucher for Counsel Services — Approved by U.S. Treasury — 2278a

APPOINTMENT AND AUTHORITY TO PAY DEFENSE COUNSEL

IN THE CASE OF: U.S.A. vs. ROBERT RIPLY

FOR: SDNY

AT: NEW YORK

IN UNITED STATES ☒ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

LOCATION NUMBER: 92961

DOCKET NUMBERS: Magistrate 2; District Court 73 Cr. 606; Court of Appeals

VOUCHER NUMBER: 135896

PROCEEDING (describe briefly): ASSIGNMENT OF COUNSEL AFTER INDICTMENT

CHARGE/OFFENSE (describe if applicable & check box →) ☐ Felony ☐ Misdemeanor: ROBBERY — 18 USC §2111

U.S. or other code citation ▶

PERSON REPRESENTED (Show full name & status, & check box →): ROBERT RIPLY

Name already appears as ☐ PI or as ☒ Df above

1 ☒ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

COURT ORDER

☒ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization named below

Is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate: JACOBS — Date: 6-21-73

OR BY ORDER OF THE COURT

(Clerk or Deputy)

U.S. DISTRICT COURT FILED JUN 26 1973 S.D. OF N.Y.

FOR SERVICES & EXPENSES VOUCHERED BELOW

TIME SPENT	DATES	HOURS	AMOUNT
I IN OPEN COURT			
A. ARRAIGNMENT &/OR PLEA			RATE PER HR $ — HOURS TIMES RATE
B. MOTIONS & REQUESTS			
C. BAIL HEARINGS			
D. SENTENCE HEARINGS			
E. TRIAL			
F. APPEAL COURT			
G. OTHER (Specify below)			
TOTAL "IN COURT" HOURS		▶	$
OUT OF COURT			
A. CONFERENCES			
B. OBTAINING & REVIEWING RECORDS			
C. LEGAL RESEARCH & BRIEF WRITING			
D. INVESTIGATIVE & OTHER WORK (Specify)			
E. TRAVEL TIME (during normal office hours only): (1) TO & FROM COURT (round trips under 1 hr not allowed) (2) OTHER TRAVEL TIME (Specify)			
TOTAL "OUT OF COURT" HOURS		▶	$
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME		▶	$

III ITEMIZED EXPENSES (Specify per instruction sheet) — AMT. PER ITEM

	$

TOTAL ITEMIZED EXPENSES ▶ $

TOTAL COMPENSATION & EXPENSES ▶ $

If more space is needed use additional blank sheet

DEDUCT AMOUNTS PREVIOUSLY PAID FOR THIS SERVICE

NET AMOUNT CLAIMED ▶ $

DATE

AMOUNT CERTIFIED/APPROVED

$

DATE

Payment in excess of statutory limitation approved under 18 USC 3006A(d)(5) AT COMPLETION OF CASE

DATE

COUNSEL ☐ IS A PRIVATE ATTORNEY ☐ IS FURNISHED BY: ☐ COMMUNITY DEFENDER ORGANIZATION ☐ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. 682-6337

VOUCHER NUMBER ▶ 135896

SS #

ATTORNEY / ORGANIZATION / ADDRESS:
FREDERICK P. HAFETZ
Goldman & Hafetz
Suite 1036
60 East 42nd Street - LINCOLN BUILDING
New York, New York 10017
ZIP CODE

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

67

...ter Accounting Service — Approved by U.S. Treas. — 2279a

APPOINTMENT AND AUTHORITY TO PAY DEFENSE COUNSEL

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF: U.S.A. vs. CHESTER CRAWFORD

FOR: SDNY

AT: NEW YORK

LOCATION NUMBER: 02501

DOCKET NUMBERS: Magistrate's — District Court: 73 Cr. 606 — Court of Appeals

VOUCHER NUMBER: 135852

PROCEEDING (describe briefly): ASSIGNMENT OF COUNSEL AFTER INDICTMENT

CHARGE/OFFENSE (describe if applicable & check box →) ☒ Felony ☐ Misdemeanor: POSTAL

U.S. or other code citation ▶ 18 USC 1111

1 ☒ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

PERSON REPRESENTED (Show full name & status, & check box →)

CHESTER CRAWFORD

Name already appears as ☐ PI or as ☒ of above

COURT ORDER

☒ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization named below

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate: Jacobs — Date: 6/20/73

OR BY ORDER OF THE COURT

(Clerk or Deputy)

U.S. DISTRICT COURT FILED JUN 26 1973 S. D. OF N.Y.

FOR SERVICES & EXPENSES VOUCHERED BELOW

* TIME SPENT	DATES	HOURS	AMOUNT
I. IN OPEN COURT			
A. ARRAIGNMENT &/OR PLEA			RATE PER HR $
B. MOTIONS & REQUESTS			HOURS TIMES RATE
C. BAIL HEARINGS			
D. SENTENCE HEARINGS			
E. TRIAL			
F. REVOCATION HEARINGS			
G. APPEALS COURT			
H. OTHER (Specify below)			
TOTAL "IN COURT" HOURS		▶	$
II. OUT OF COURT			
A. INTERVIEWS & CONFERENCES			
B. OBTAINING & REVIEWING RECORDS			$
C. LEGAL RESEARCH & BRIEF WRITING			
D. INVESTIGATIVE & OTHER WORK (Specify)			
E. TRAVEL TIME (during normal office hours only) (1) TO & FROM COURT (round trips under 1 hr not allowed) (2) OTHER TRAVEL TIME (Specify)			
TOTAL "OUT OF COURT" HOURS		▶	$
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME		▶	$

III. ITEMIZED EXPENSES (Specify, per instruction sheet) — AMT. PER ITEM

	$

TOTAL ITEMIZED EXPENSES ▶ $

TOTAL COMPENSATION & EXPENSES ▶ $

DEDUCT AMOUNTS PREVIOUSLY PAID (if applicable) $

NET AMOUNT CLAIMED ▶ $

DATE	AMOUNT APPROVED

DATE $

COUNSEL { ☐ IS A PRIVATE ATTORNEY / IS FURNISHED BY: ☐ COMMUNITY DEFENDER ORGANIZATION / ☒ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. 869-8338

VOUCHER NUMBER ▶ 135852

ATTORNEY — SS # 124-24-4082
ORGANIZATION — JAY GOLD, ESQ.
ADDRESS — 36 W. 44th St.
New York, N.Y.
ZIP CODE 10036

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

Copy 5 - Filed in court clerk's office at time of appointment made

68

CJA 20 Appointment & Voucher for Counseling Services

Approved by U.S. Treas...

2280a

APPOINTMENT AND AUTHORITY TO PAY DEFENSE COUNSEL

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF: U.S.A. vs. ROBERT B. RIPPE

FOR: SDNY

AT: NEW YORK

LOCATION NUMBER: 2201

PROCEEDING (describe briefly): ASSIGNMENT OF COUNSEL AFTER INDICTMENT

CHARGE/OFFENSE (describe if applicable & check box →) ☒ Felony ☐ Misdemeanor

COUNTERFEIT CONSPIRACY 18 USC §1708, 2114

U.S. or other code citation ▶

PERSON REPRESENTED (Show full name & status, & check box →)

ROBERT B. RIPPE

Name already appears as ☐ PI or as ☒ of above

1 ☒ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

DOCKET NUMBERS
Magistrate:
District Court: 73 Cr. 606
Court of Appeals:

VOUCHER NUMBER

COURT ORDER

☒ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization named below

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate

Date 6-21-73

OR BY ORDER OF THE COURT

(Clerk or Deputy)

FOR SERVICES & EXPENSES VOUCHERED BELOW

* TIME SPENT	DATES	HOURS	AMOUNT
I IN OPEN COURT			
A. ARRAIGNMENT &/OR PLEA			RATE PER HR $ HOURS TIMES RATE
B. MOTIONS & REQUESTS			
C. BAIL HEARINGS			
D. SENTENCE HEARINGS			
E. TRIAL			
F. REVOCATION HEARINGS			
G. APPEALS COURT			
H. OTHER (Specify below)			
TOTAL "IN COURT" HOURS		▶	$
II OUT OF COURT			
A. INTERVIEWS & CONFERENCES			$
B. OBTAINING & REVIEWING RECORDS			
C. LEGAL RESEARCH & BRIEF WRITING			
D. INVESTIGATIVE & OTHER WORK (Specify)			
E. TRAVEL TIME (during normal office hours only): (1) TO & FROM COURT (round trips under 1 hr not allowed) (2) OTHER TRAVEL TIME (Specify)			
TOTAL "OUT OF COURT" HOURS		▶	$
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME		▶▶	$

III ITEMIZED EXPENSES (Specify, per instruction sheet) — AMT. PER ITEM $

TOTAL ITEMIZED EXPENSES ▶ $

TOTAL COMPENSATION & EXPENSES ▶ $

* If more space is needed use additional blank sheets

DEDUCT AMOUNTS PREVIOUSLY PAID IF APPLICABLE

NET AMOUNT CLAIMED ▶▶ $

CERTIFICATIONS OF ATTORNEY/PAYEE

...ation and/or reimbursement for work in this case ☐ Yes ☐ No

...previously applied for or received compensation ...

...much were you paid? $

...you paid?

...did you represent ... court ☐ Yes ☐ No

I SWEAR & AFFIRM THE TRUTH & CORRECTNESS OF ABOVE STATEMENTS

DATE

SIGNATURE OF JUDGE/MAGISTRATE — DATE

AMOUNT CERTIFIED/APPROVED $

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS — Payment in excess of statutory limitation approved under 18 USC 3006A(d)(3) — DATE — AMT. APPROVED $

COUNSEL ☐ IS A PRIVATE ATTORNEY ☐ IS FURNISHED BY: ☐ COMMUNITY DEFENDER ORGANIZATION ☐ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. 349-6128

VOUCHER NUMBER ▶ 135986

SS # 129-09-6421

ATTORNEY / ORGANIZATION / ADDRESS

[redacted]
399 Broadway
New York, New York [redacted]

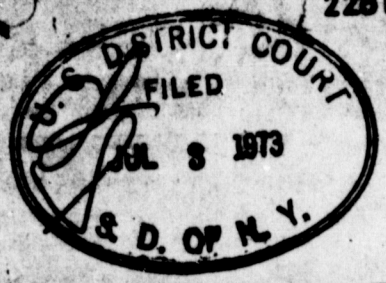
ZIP CODE

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

Copy 5 ... filed in court clerk's office as soon as appointment made

72-69

2281a



NOTICE OF APPEARANCE

(Please Print) 73 cr. 606

TITLE OF CASE U. S. v. Thomas Carroll.

NAME OF LAW FIRM Michael P. Direnzo

ADDRESS 15 Columbus Circle N/C 10023

ATTORNEYS FOR Deft.

ORDER FORM

NO. OF COPIES OF TRANSCRIPT ORDERED ____ DAILY ____ PERIODICAL ____

DELIVER COPIES TO ____

NOTICE: ALL COUNSEL ORDERING OFFICIAL COURT TRANSCRIPTS HEREBY ACCEPT RESPONSIBILITY FOR PAYMENT.

ACCEPTED BY: ____
Signature of attorney ordering transcript

DATE: June 25-1973 PHONE NO. 541-7740

U.S. DISTRICT COURT
FILED
JUL 11 1973
S. D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

-against-

THOMAS CARROLL, et al,

Defendants
----------x

S. 73 CR 606

NOTICE OF MOTION

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of MICHAEL P. DIRENZO, duly sworn to on the 10th day of July, 1973, the undersigned will apply to this Court before the Honorable Charles M. Metzner, United States District Judge for the Southern District of New York, at the United States Courthouse, Foley Square, New York, New York, on the 27th day of July, 1973, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order directing the United States Attorney to furnish the defendant THOMAS CARROLL, the following:

1. DISCOVERY AND INSPECTION:

a. pursuant to Rule 16(a), Federal Rules of Criminal Procedure, permitting the defendant THOMAS CARROLL, to inspect and copy or photograph any relevant written or recorded statements made by him, or copies thereof, within the possession, custody or control of the Government, the existance of which is known, or by the exercise of due diligence may become known to the Government, including, but not limited to mechanical recordings or any tape, whether in the possession of the Government or any other agency or Department

of the State of New York or the City of New York, who participated in the arrest of said defendant;

b. pursuant to Rule 16(b), Federal Rules of Criminal Procedure, permitting defendant THOMAS CARROLL to inspect and copy or photograph any written or recorded statement or confession, made by the co-defendants including, but not limited to, any mechanical recording of any type. If the said relief is denied then the Government should be ordered to inform the defendant of the existence of any confession or statement, whether written or oral, made by the co-defendants, which would inculpate the defendant, THOMAS CARROLL. This request is made in order that the defendant may avail himself of the remedies of BRUTON v. UNITED STATES, 88 S. Ct. 1620. (1968).

c. pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure permitting the defendant THOMAS CARROLL to inspect and copy or photograph any written or recorded statement or confession made by any co-conspirator whether or not named in the Indictment, including, but not limited to any mechanical recordings of any type, relating to this Indictment;

d. pursuant to Rule 16(b) permitting the defendant, THOMAS CARROLL, to inspect and copy or photograph, any recordings, transcriptions and writings within the possession, custody and control of the Government derived directly or indirectly, from, or relating to the interception or overhearing of any telephone or other communication by the use of any wire tapping or eavesdropping device or technique, and which are relevant to the allegations of the Indictment herein or were the source, in whole or in part, of any of the Government's

evidence or information relating to the said Indictment;

e. permitting the defendant THOMAS CARROLL to inspect and copy or photograph all evidence in the possession, custody or control of the Government favorable to the said defendant pursuant to BRADY v. MARYLAND, 373 U.S. 83, S. Ct. 1184, (1963);

f.(1) directing the United States Attorney to produce and make available for inspection the reports of any chemical or other scientific tests including fingerprints, or analysis conducted by any means including but not limited to the use of ultra-violet or intra-red forms of light;

(2) detailed reports and/or results of post mortem examinations and of scientific tests or experiments made in connection with the autopsy and connected examinations of WILLIAM HICKEY, deceased. This includes, but is not limited to, toxicologists' reports and of any scientific tests or experiments made in connection with the particular case involved in the instant indictment. This likewise, applies to copies thereof, within the possession, custody or control of the United States Attorney, the existence of which is known, or by the exercise of due diligence may become known to the prosecutor.

(3) photographs, if any, taken of the deceased person, as well as all photographs taken, or duplicates thereof, in connection with this case, within the custody, possession or control of the prosecuting attorney, the existence of which is known, or by the exercise of due diligence may become known to him.

(4) any and all hospital reports, if any, concerning WILLIAM HICKEY, on/or about April 5th, 1973;

g. pursuant to Rule 16(b) of the Federal Rules of Crinimal Procedure permitting the defendant THOMAS CARROLL to inspect and copy or photograph any books, papers, documents, tangible objects or copies thereof which were taken from the possession of the defendant and are now in the possession, custody or control of the Government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the Government.

2. BILL OF PARTICULARS, setting forth the following:

AS TO COUNT 1

a. state the names of all co-conspirators not named in the Indictment, known to the attorney for the Government, and their addresses at the time of their alleged participation;

b. state any overt acts not enumerated in the Indictment concerning which acts the Government intends to offer evidence upon the trial of the Indictment herein;

c. State the exact date when, the place where, with whom and in what manner the defendant THOMAS CARROLL, initially entered into the conspiracy alleged and the duration of his participation herein;

d. state whether as to any acts alleged in the Indictment, or as to any acts or conversation intended to be relied upon by the Government at the trial, even though not alleged in the Indictment, (i) such acts or conversations were had at the instance of the Government and (ii) whether any person including any defendant or co-conspirator known to the Government regardless of whether named in the Indictment participating in or who arranged for any such act or conversation was acting at the instance or on behalf of the Government and if so, identify such individual or individuals, state when, where and with whom they did so and state whether such

individual or individuals were directly or indirectly receiving or promised any money or benefit of any kind from the Government;

e. state in what manner each overt act furthered the objects of the conspiracy;

f. set forth the specific dates, times and places that the defendant THOMAS CARROLL was present as to each of the overt acts, allegedly constituting the conspiracy;

AS TO COUNT 2

g. state exactly where in the Southern District of New York the defendants did commit the act set forth in Count 2;

h. state with more specificity the occasions on which the defendants did commit the act set forth in Count 2 if known to the Government;

i. State whether it is alleged that the defendant THOMAS CARROLL did actually commit the act set forth in Court 2 or whether he is charged as an aider or abettor. If he is charged as an aider or abettor, then who actually did commit said acts;

j. the exact place, location or area, designating the same by street and number where the alleged crime was committed;

k. the exact place and time, if not, the approximate time, when, the alleged crime was committed;

l. the alleged number of wounds which were inflicted upon the said WILLIAM HICKEY causing his death;

m. set forth the names and addresses of all identifying witnesses together with any Police Department Bureau of Criminal Identification and reports, if any, as to each witness.

n. set forth all hospital reports, physicians' reports, concerning the deceased, made and/or reported, in connection with his death;

o. set forth the specific cause of death;

p. the detailed hospital report, if any, in reference to WILLIAM HICKEY, as a patient at any hospital in which he was treated on April 5th, 1973;

q. the detailed autopsy report and toxicoloquist report, to WILLIAM HICKEY, deceased;

AS TO COUNT 3

r. state exactly where in the Southern District of New York the defendants did commit the acts set forth in Court 3;

s. state whether it is alleged that the defendant THOMAS CARROLL did actually commit the acts set forth in Court 3 or whether he is charged as an aider or abettor. If he is charged as an aider or abettor, then who actually did commit said acts;

t. the exact place, location or area designating same by street and number, where the alleged assault was committed;

u. the exact place and time, if not, the approximate time, when the alleged assault was committed.

v. set forth the specific wounds sustained by CRAWFORD LAWRENCE;

w. set forth all hospital reports, physicians' reports, concerning the treatment of the wounds sustained by CRAWFORD LAWRENCE; and

for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
July 10th, 1973.

Yours, etc.,

MICHAEL P. DIRENZO
Attorney for Defendant
THOMAS CARROLL
Office & P. O. Address
15 Columbus Circle
New York, New York 10023
(212) 541-7740

TO: PAUL CURRAN,
United States Attorney
Southern Dist. of N. Y.
United States Courthouse
Foley Square
New York, New York 10013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

No. S 73 CR 606

-against-

THOMAS CARROLL, et al.,

AFFIDAVIT

Defendants.
----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MICHAEL P. DIRENZO, being duly sworn, deposes and says:

That I am the attorney for the defendant THOMAS CARROLL and am fully familiar with the facts and circumstances herein.

The defendant THOMAS CARROLL moves herein for Discovery and Inspection of any written or recorded statements made by him within the possession, custody or control of the Government. There is no question that such materials are relevant and indeed, are necessary to the preparation of the defense herein of said defendant, although no such showing is necessary under amended Rule 16(a) of the Federal Rules of Criminal Procedure. Moreover, recent decisions of the United States Circuit Court of Appeals for the Second Circuit have indicated that the general rule is to make such statements available even where the statements are in the form of intercepted communications.

In the opinion of counsel herein, the items sought in numbers 1(a) through 1 (g) of the Notice are both material to the defense and reasonable. Upon information and belief, your deponent has been advised that a primary

source of the investigation which led to the instant Indictment was derived from the interception of telephone communications through various and diverse eavesdropping techniques. The disclosure of these recordings are fundamental to the preparation of a meaningful defense.

The second part of this omnibus motion requests the Government to furnish a Bill of Particulars. Faced with an Indictment framed as the present one, the defendant cannot perceive the nature of the charges in terms of what is alleged that his participation actually consisted of. Since the Government must meet at the time of the trial its burden of proof of establishing defendant, THOMAS CARROLL's, participation beyond a reasonable doubt we are at a complete loss to see how the Government's position will be hindered by informing the defendant with particularity what the defendant CARROLL is alleged to have done with respect to the crime charged.

It is clear, therefore, that from the Indictment as it presently reads, the said defendant is unable either to prepare a defense or to assess the scope or nature of the charge against him. The instant Indictment is on its face in need of further explanations through particulars if a defendant is to be given a true opportunity to prepare for a trial. I might further add that no prejudice to the Government would result from a particularization as requested. The defendant is not in quest of evidentiary material but rather a particularization of the allegations charged so that he will be put into a position where he may adequately assess the

charges against him and competently prepare his defense to these charges. Indeed, a fair trial which is as much a concern of the Government as of the defendant, will result from the granting of the Order prayed for within. In short, the Indictment does not adequately inform an innocent and uninformed defendant of what this case is about.

WHEREFORE, it is respectfully prayed that this omnibus motion be granted in all respects.

Michael P. Direnzo

MICHAEL P. DIRENZO

Sworn to before me, this
10th day of July, 1973.

Carmen T. Rosado

CARMEN T. ROSADO
Notary Public, State of New York
No. 03-[illegible]638580
Qualified in Bronx County
Commission Expires March 30, 1974

United States v. Thomas Joseph Carroll
et al., 73 Cr. 606

Defendant Carroll's motion for discovery and inspection is disposed of as follows:

1(a) granted; 1(b) denied; 1(c) denied; 1(d) granted to the extent that there were such wire taps and movant is an aggrieved party as defined in 18 U.S.C. § 2510(11); 1(e) the government shall furnish "Brady" material if it exists; 1(f)(1) granted; 1(f)(2) granted; 1(f)(3) granted; 1(f)(4) granted; 1(g) granted.

Defendant Carroll's motion for a bill of particulars is disposed of as follows:

(a) granted as consented to by the government; (b)-(e) denied; (f) and (g) granted; (h) denied; (i)-(l) granted on consent; (m) granted to the extent directed by United States v. Baum, F.2d (2d Cir.). The government shall inform the court in camera by affidavit filed on or before August 7, 1973 of the specific grounds on which it relies to withhold any such information; (n) granted to the extent that the government has in its possession such documents;

(o)-(w) granted as consented to by the government.

The government shall furnish the above information on or before August 10, 1973.

So ordered.

Dated: New York, N.Y.
August 6, 1973

Charles H. Tenney
U. S. D. J.

FILED
JUL 16 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

THOMAS CARROLL, et al. :

Defendants :

----------x

S. 73 Cr. 606 CMM

NOTICE OF MOTION BY DEFENDANT TERRENCE D. MYERS

PLEASE TAKE NOTICE that the defendant TERRENCE D. MYERS, by his attorney, the Federal Defender Services Unit of the Legal Aid Society (Murray Mogel, of counsel), upon all the proceedings heretofore had herein and upon the annexed affidavit of MURRAY MOGEL, duly sworn on the 12th day of July, 1973, will apply to this Court before the Honorable Charles M. Metzner, United States District Judge for the Southern District of New York, at the United States Courthouse, Foley Square, New York, New York, on the 27th day of July, 1973, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order directing the United States Attorney to furnish the defendant TERRENCE D. MYERS, the following:

1. DISCOVERY AND INSPECTION:

a. pursuant to Rule 16(a), Federal Rules of Criminal Procedure, permitting the defendant TERRENCE D. MYERS, to inspect and copy or photograph any relevant written or recorded statements made by him, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known to the Government, including, but not limited to mechanical recordings or any tape, whether in the possession of the Government or any

other agency or Department of the State of New York or the City of New York, who participated in the arrest of said defendant;

b. pursuant to Rule 16(b), Federal Rules of Criminal Procedure, permitting defendant TERRENCE D. MYERS to inspect and copy or photograph any written or recorded statement or confession, made by the co-defendants including, but not limited to, any mechanical recording of any type. If the said relief is denied then the Government should be ordered to inform the defendant of the existence of any confession or statement, whether written or oral, made by the co-defendants, which would inculpate the defendant TERRENCE D. MYERS. This request is made in order that the defendant may avail himself of the remedies of BRUTON v. UNITED STATES, 88 S. Ct. 1620. (1968).

c. pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure permitting the defendant TERRENCE D. MYERS to inspect and copy or photograph any written or recorded statement or confession made by any co-conspirator whether or not named in the Indictment, including, but not limited to any mechanical recordings of any type, relating to this Indictrent;

d. pursuant to Rule 16(b) permitting the defendant, TERRENCE D. MYERS, to inspect and copy or photograph, any recordings, transcriptions and writings within the possession, custody and control of the Government derived directly or indirectly, from, or relating to the interception or overhearing of any telephone or other communication by the use of any wire tapping or eavesdropping device or technique, and which are relevant to the allegations of the Indictment herein or were the source, in whole or in part, of any of the Government's evidence or information relating to the said

e. permitting the defendant TERRENCE D. MYERS to inspect and copy or photograph all evidence in the possession, custody or control of the Government favorable to the said defendant pursuant to BRADY v. MARYLAND, 373 U.S. 83, S. Ct. 1184, (1963);

f. (1) directing the United States Attorney to produce and make available for inspection the reports of any chemical or other scientific tests including fingerprints, or analysis conducted by any means including but not limited to the use of ultra-violet or intra-red forms of light;

(2) detailed reports and/or results of post mortem examinations and of scientific tests or experiments made in connection with the autopsy and connected examinations of WILLIAM HICKEY, deceased. This includes, but is not limited to, toxicologists' reports and of any scientific tests or experiments made in connection with the particular case involved in the instant indictment. This likewise, applies to copies thereof, within the possession, custody or control of the United States Attorney, the existence of which is known, or by the exercise of due diligence may become known to the prosecutor.

(3) photographs, if any, taken of the deceased person, as well as all photographs taken, or duplicates thereof, in connection with this case, within the custody, possession or control of the prosecuting attorney, the existence of which is known, or by the exercise of due diligence may become known to him.

(4) any and all hospital reports, if any, concerning WILLIAM HICKEY, on/or about April 5th, 1973;

g. pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure permitting the defendant TERRENCE D. MYERS to inspect and copy or photograph any books, papers, documents, tangible objects or copies thereof which were taken from the possession of the defendant and are now in the possession, custody or control of the Government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the Government.

2. BILL OF PARTICULARS, setting forth the following:

AS TO COUNT 1

a. state the names of all co-conspirators not named in the Indictment, known to the attorney for the Government, and their addresses at the time of their alleged participation;

b. state any overt acts not enumerated in the Indictment concerning which acts the Government intends to offer evidence upon the trial of the Indictment herein;

c. state the exact date when, the place where, with whom and in what manner the defendant TERRENCE D. MYERS, initially entered into the conspiracy alleged and the duration of his participation herein;

d. state whether as to any acts alleged in the Indictment, or as to any acts or conversation intended to be relied upon by the Government at the trial, even though not alleged in the Indictment, (i) such acts or conversations were had at the instance of the Government and (ii) whether any person including any defendant or co-conspirator known to the Government regardless of whether named in the Indictment participating in or who arranged for any such act or conversation was acting at the instance or on behalf of the Government and if so, identify such individual or individuals, state when, where and with whom they did so and state whether such individual or individuals were directly or indirectly receiving or promised any money or benefit of any kind from the Government;

e. state in what manner each overt act furthered the objects of the conspiracy;

f. set forth the specific dates, times and places that the defendant TERRENCE D. MYERS was present as to each of the overt acts, allegedly constituting the conspiracy;

AS TO COUNT 2

g. state exactly where in the Southern District of New York the defendants did commit the act set forth in Count 2;

h. state with more specificity the occasions on which the defendants did commit the act set forth in Count 2 if known to the Government;

i. state whether it is alleged that the defendnat TERRENCE D. MYERS did actually commit the act set forth in Count 2 or whether he is charged as an aider or abettor. If he is charged as an aider or abettor, then who actually did commit said acts;

j. the exact place, location or area, designating the same by street and number where the alleged crime was committed;

k. the exact place and time, if not, the approximate time, when, the alleged crime was committed;

l. the alleged number of wounds which were inflicted upon the said WILLIAM HICKEY causing his death;

m. set forth the names and addresses of all identifying witnesses together with any Police Department Bureau of Criminal Identification and reports, if any, as to each witness.

n. set forth all hospital reports, physicians' reports, concerning the deceased, made and/or reported, in connection with his death;

o. set forth the specific cause of death;

p. the detailed hospital report, if any, in reference to WILLIAM HICKEY, as a patient at any hospital in which he was treated on April 5th, 1973;

q. the detailed autopsy report and toxicologist report, to WILLIAM HICKEY, deceased;

AS TO COUNT 3

r. state exactly where in the Southern District of New York the defendants did commit the acts set forth in Count 3;

s. state whether it is alleged that the defendant TERRENCE D. MEYERS did actually commit the acts set forth in Count 3 or whether he is charged as an aider or abettor. If he is charged as an aider or abettor, then who actually did commit said acts;

t. the exact place, location or area designating same by street and number, where the alleged assault was committed;

u. the exact place and time, if not, the approximate time, when the alleged assault was committed;

v. set forth the specific wounds sustained by CRAWFORD LAWRENCE;

w. set forth all hospital reports, physicians' reports, concerning the treatment of the woulds sustained by CRAWFORD LAWRENCE; and

for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
July 12th, 1973.

Yours etc.,

ROBERT KASANOF, ESQ.

By: Murray Mogel

Federal Defender Services Unit
The Legal Aid Society
15 Park Row -- 10th Floor
New York, New York 10038
(212) 374-1737

TO: PAUL CURRAN, ESQ.
United States Attorney
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Attn: JOHN V. KENNEY, ESQ.
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- : S. 73 Cr. 606 CMM

THOMAS CARROLL, et al. : AFFIDAVIT

Defendants :

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MURRAY MOGEL, being duly sworn, deposes and says:

That I am the attorney for the defendant TERRENCE D. MYERS and am fully familiar with the facts and circumstances herein.

The defendant THOMAS D. MYERS moves herein for Discovery and Inspection of any written or recorded statements made by him within the possession, custody or control of the Government. There is no question that such materials are relevant and indeed, are necessary to the preparation of the defense herein of said defendant, although no such showing is necessary under amended Rule 16(a) of the Federal Rules of Criminal Procedure. Moreover, recent decisions of the United States Circuit Court of Appeals for the Second Circuit have indicated that the general rule is to make such statements available even where the statements are in the form of intercepted communications.

In the opinion of counsel herein, the items sought in numbers 1(a) through 1(g) of the Notice are both material to the defense and reasonable. Upon information and belief, your deponent has been advised that a primary

source of the investigation which led to the instant Indictment was derived from the interception of telephone communications through various and diverse eavesdropping techniques. The disclosure of these recordings are fundamental to the preparation of a meaningful defense.

The second part of this omnibus motion requests the Government to furnish a Bill of Particulars. Faced with an Indictment framed as the present one, the defendant cannot perceive the nature of the charges in terms of what is alleged that his participation actually consisted of. Since the Government must meet at the time of the trial its burden of proof of establishing defendant, TERRENCE D. MYERS', participation beyond a reasonable doubt we are at a complete loss to see how the Government's position will be hindered by informing the defendant with particularity what the defendant MYERS is alleged to have done with respect to the crime charged.

It is clear, therefore, that from the Indictment as it presently reads, the said defendant is unable either to prepare a defense or to assess the scope or nature of the charge against him. The instant Indictment is on its face in need of further explanations through particulars if a defendant is to be given a true opportunity to prepare for a trial. I might further add that no prejudice to the Government would result from a particularization as requested. The defendant is not in quest of evidentiary material but rather a particularization of the allegations charged so that he will be put into a position where he may adequately assess the charges against him and competently prepare his defense to these charges. Indeed, a fair trial which is as much a concern of the Government as of the defendant, will result from the granting of the Order prayed for within. In short,

the Indictment does not adequately inform an innocent and uninformed defendant of what this case is about.

WHEREFORE, it is respectfully prayed that this omnibus motion be granted in all respects.

Murray Mogel

Murray Mogel

Sworn to before me this
13th day of July, 1973.

Inez Babb

INEZ BABB
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-0122040
Qualified in Kings County
Commission Expires March 30, 1975

AUG 1973 D. OF N.Y.

United States v. Thomas Joseph Carroll
et al., 73 Cr. 606

Defendant Myers' motion for discovery and inspection is disposed of as follows:

1(a) granted; 1(b) denied; 1(c) denied; 1(d) granted to the extent that there were such wire-taps and movant is an aggrieved party as defined in 18 U.S.C. § 2510(11); 1(e) the government shall furnish "Brady" material if it exists; 1(f)(1) granted; 1(f)(2) granted; 1(f)(3) granted; 1(f)(4) granted; 1(g) granted.

Defendant Myers' motion for a bill of particulars is disposed of as follows:

(a) granted as consented to by the government; (b)-(e) denied; (f) and (g) granted; (h) denied; (i)-(l) granted on consent; (m) granted to the extent directed by United States v. Baum, F.2d (2d Cir.). The government shall inform the court in camera by affidavit filed on or before August 7, 1973 of the specific grounds on which it relies to withhold any such information; (n) granted to the extent that the government has in its possession such documents;

MICROFILM AUG 7 1973

(o)-(w) granted as consented to by the government.

The government shall furnish the above information on or before August 10, 1973.

So ordered.

Dated: New York, N. Y.
August 6, 1973

Charles H. Tenney
U. S. D. J.

D File S.D.N.Y. 73 Cr. 606

Warrant of Removal on Complaint or Information — USDC Form No. 14A 2304a

United States District Court

Judge Metzner

for the District of Columbia

U.S. DISTRICT COURT FILED JUL 3 1973 S.D. OF N.Y.

UNITED STATES OF AMERICA

v.

Terrence D. Myers

No. MD30-1271-73

To

A complaint[1] having been filed before U.S. Magistrate Margolis

for the Southern District of New York charging

with violation of

18 U.S.C. 2 & 1114

and the above named defendant having been arrested in this District and, after waiving[2] hearing, having been committed by a United States Magistrate to your custody pending removal to that district.

You are hereby commanded to remove the above named defendant forthwith to the Southern District of New York and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him.

Bond on removal is fixed in the amount of $ held without bond.

Lawrence B. Margolis

U.S. Magistrate

Dated at Washington, D.C. this 8th day of June 1973

1 Strike word not applicable.
2 Strike "waiving" if hearing was had.
3 If commitment was not by a U. S. Commissioner strikeout words "by a United States Commissioner."

RETURN

District of

ss

Received the within warrant of removal the 13 day of June 1973 and executed same. Per Order Writ

James F Palmer
U. S. Marshal.

By
Deputy Marshal.

Y.L. 6/12/73

RB

File D.U.M. 73 Cr. 0006

2305a

Warrant of Removal on Complaint or Information — Cr. Form No. 14A

United States District Court

for the District of Columbia

Judge Metzner

UNITED STATES OF AMERICA

v.

Geoffrey M. Mann

No. MD30-1271-73

U.S. DISTRICT COURT FILED JUL 3 1973 S.D. of N.Y.

To

A complaint[1] ~~information~~ having been filed before U.S. Magistrate ~~Mayo~~ for the Southern District of New York charging with violation of ~~XXXXXXXXXXXXXXXX~~

18 U.S.C. 2 & 1114

and the above named defendant having been arrested in this District and, after waiving[2] hearing, having been committed by a United States ~~Commissioner~~ Magistrate to your custody pending removal to that district,

You are hereby commanded to remove the above named defendant forthwith to the Southern District of New York and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him.

Bond on removal is fixed in the amount of $ held without bond.

Lawrence S. Margolis

~~Chief Deputy Clerk~~

U. S. Magistrate

Dated at Washington, D.C. this 8th day of June 1973

1 Strike word not applicable.
2 Strike "waiving" if hearing was had.
3 If commitment was not by a U. S. Commissioner strikeout words "by a United States Commissioner."

RETURN

District of Columbia ss

Received the within warrant of removal the 12 day of June 1973 and executed same. Per Order Cert

Robert F. Palmer

U. S. Marshal.

By James A. Allen

Deputy Marshal.

F. 2. 6/12/73

14

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2306a

- -x

UNITED STATES OF AMERICA :

-v- :

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, :

Defendants. :

- -x

NOTICE OF MOTION

73 Cr. 606

U.S. DISTRICT COURT
FILED
JUL 17 1973
S. D. OF N. Y.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affirmation of Frederick P. Hafetz, Esq., dated the 12th day of July, 1973, defendant Robert E. Rippy will move this Court, at the United States Courthouse, Foley Square, New York, New York, for the following:

I. An Order suppressing the introduction into evidence of statements made by defendant Rippy on the grounds that said statements were obtained in violation of defendant's rights under the Fifth and Sixth Amendments to the United States Constitution.

II. An Order pursuant to Fed. R. Crim. P. Rule 41 suppressing the introduction of any tangible evidence against defendant Rippy on the grounds that if such evidence was obtained by the government, it was obtained in violation of defendant's rights under the Fourth Amendment to the United States Constitution.

III. A. An Order pursuant to the Fourth Amendment to the United States Constitution and 18 U.S.C. §2518 making

available to defendant Rippy and his counsel, for inspection and copying of, communications of defendant Rippy which were intercepted by electronic surveillance, and where such electronic surveillance was court authorized, an Order permitting inspection and copying of warrants authorizing such interception, applications in support of the issuance of said warrants, and orders and applications in support thereof postponing notice of inspection.

B. An Order pursuant to the Fourth Amendment to the United States Constitution requiring the government to disclose all non-court authorized interception of communications of defendant Rippy.

C. Upon receipt of the foregoing material requested in III. A. and III. B., an Order permitting defendant Rippy thereafter to move to suppress all evidence obtained by such surveillance and any fruits thereof.

IV. An Order directing the government to disclose all evidence in its possession, custody or control which may tend to exculpate defendant Rippy or to establish his innocence of the crimes charged or to establish any defense thereto, including, but not limited to, evidence tending to establish any bias of government witnesses against Rippy or any motive of government witnesses to implicate defendant Rippy in the crimes charged.

V. An Order pursuant to Fed. R. Crim. P. 16 permitting discovery, inspection and copying of the following:

1. Names and addresses of all government witnesses, to be furnished no later than August 3, 1973.

2. Grand Jury testimony of all such persons. 2308a

3. Names and addresses of all witnesses who will give testimony as to commission of prior crimes by defendant, to be furnished no later than August 3, 1973.

4. Names and addresses of persons present at and having information relevant to the transactions as to which the government plans to present evidence at trial but whom the government does not intend to call as witnesses at trial.

5. All oral, written or recorded statements, including notes or transcripts thereof, whether exculpatory or inculpatory, made by defendant Rippy, including all such statements made to a third person, thereafter told by said third person to a public servant and then reduced to writing by that public servant as part of said third person's statement which are within the possession, custody or control of any law enforcement agency, including, but not limited to, transcripts, logs and actual recordings of such statements obtained by the government through the use of electronic surveillance or any mechanical devices.

6. All books, records, papers, documents, memoranda, tangible objects or copies of portions thereof including, but not limited to, logs, transcripts and actual recordings of statements obtained by the government through the use of any electronic surveillance or any mechanical devices, relevant to the investigation or prosecution of this case, which are within the possession, custody or control of any law enforcement agency.

7. The results or reports of any physical or mental examinations, scientific tests or experiments involved in or in any way related to the instant case.

8. A copy of prior convictions of defendant Rippy and any pending charges against him other than this indictment.

9. A copy of prior convictions and any pending charges against government witnesses, and a statement of all non-government investigations of which said witnesses are a target.

VI. An Order pursuant to Fed. R. Crim. P. Rule 7(f) directing the government to furnish the following information to defendant Rippy and his counsel:

COUNT ONE

1. Names and addresses of all unindicted co-conspirators.

2. Date or dates of the conspiratorial agreement.

3. Place or places at which conspiratorial agreement was made.

4. Names of persons present at time conspiratorial agreement was made.

5. Regarding overt act 1:

(a) where Myers and the Crawfords met prior to going to the vicinity of Wall Street;

(b) specific place or places to which they went in the vicinity of Wall Street;

(c) how they traveled to the vicinity of Wall Street;

(d) names of other persons present during the time they met and went to the vicinity of Wall Street;

(e) time at which they met and time at which they went to the vicinity of Wall Street.

6. Regarding overt act 2:

(a) time of said meeting;

(b) specific place of said meeting;

(c) names of other persons present at said meeting.

7. Regarding overt act 3:

(a) time of said meeting;

(b) name of "John Doe, a/k/a 'Jack'" if now known;

(c) names of others present at this meeting.

COUNTS TWO AND THREE

8. Time at which alleged events occurred.

9. Specific place of the alleged killing and the alleged assault.

10. Description of manner in which murder occurred.

11. Precise location of Hickey and Lawrence at time of the murder and assault alleged.

12. Description of weapons used against Hickey.

13. Description of all weapons in possession of the defendants and names of specific defendants who possessed said weapons.

14. Names of others present at time of events alleged.

15. Manner in which defendants charged as aiders and abettors (18 U.S.C. §2) did so.

VII. An Order requiring the government to bring all incarcerated witnesses to the United States Courthouse for the Southern District of New York prior to trial for interview by defendant Rippy's attorney.

VIII. Defendant Rippy respectfully joins in the pre-trial motions made by counsel of each co-defendant insofar as said motions are relevant to him.

Dated: New York, N.Y., July 12, 1973

Yours, etc.

FREDERICK P. HAFETZ
Goldman & Hafetz
60 East 42nd St.
New York, N.Y. 10017
(212) MU 2-8337
Attorney for Defendant Robert E. Rippy

TO:
HON. PAUL J. CURRAN
United States Attorney
Southern District of N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
-v-	AFFIRMATION
THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN,	73 Cr. 606
Defendants.	

FREDERICK P. HAFETZ, a member of the bar of the State of New York, hereby affirms under penalty of perjury that:

1. I am counsel for defendant Rippy in the above-entitled case. This affirmation is submitted in support of defendant Rippy's pre-trial motions.

2. Regarding the motion to suppress introduction of a statement made by defendant Rippy to government agents, I am advised by him that this statement was obtained from him while he was in prison serving a sentence imposed in another case. Rippy's attorney was not present when he was interrogated by the government agents.

3. Regarding the motion to suppress introduction of physical evidence, defendant is uncertain whether any tangible items were taken from premises or property in which he had an interest. If said items were seized, I submit that this was done unlawfully. Defendant at no time consented to such seizure. Further, to my knowledge, there was no search warrant for such seizure nor was there probable cause for it.

4. In regard to the request for discovery and particulars, this information is particularly significant in this case because a capital offense is charged. Defendant denies participation in the crimes charged. In order to prepare properly for this trial, I need the information requested, and need it as quickly as possible to utilize it effectively and to obviate the necessity for requests of adjournment during trial to conduct investigation.

Frederick P. Hafetz

FREDERICK P. HAFETZ

Dated: New York, N.Y.
July 12, 1973

United States v. Thomas Joseph Carroll,
et al., 73 Cr. 606

Defendant Rippy's motion for a hearing is granted. The hearing will proceed on Items 1 and 2 on September 5, 1973 at 11:30 A.M. in Room 35.

The motion for discovery is disposed of as follows:

IIIA and B granted to the extent that any such material exists; III C denied without prejudice to renewal; IV. the government shall furnish "Brady" material if it exists; V(1) granted to the extent directed by United States v. Baum, F.2d (2d Cir.). The government shall inform the court in camera by affidavit filed on or before August 7, 1973 of the specific grounds on which it relies to withhold any such information; V(2) denied; V(3) granted to the extent allowed in V(1); V(4) denied; V(5) granted solely as to movant's statements, otherwise denied; V(6) denied except as to the portion granted above; V(7) and (8) granted; V(9) granted only as to prior convictions and pending charges, otherwise denied.

MICRO
AUG 7 1973

The motion for a bill of particulars is disposed of as follows:

VI(1) granted as consented to by the government; VI(2)-(4) denied; VI(5)(a) and (b) denied; VI(5)(c) granted; VI(5)(d) denied; VI(5)(e)-(6)(b) granted as consented to by the government; VI(6)(c) denied; VI(7)(a) and (b) granted; VI(7)(c) denied; VI(8) and (9) granted as consented to by the government; VI(10) and (11) denied; VI(12) and (13) granted as consented to by the government; VI(14) and (15) denied; VII. granted as consented to by the government.

The government shall furnish the above information on or before August 10, 1973.

So ordered.

Dated: New York, N.Y.
August 6, 1973

Charles M. Metzner
U. S. D. J.

U.S. DISTRICT COURT
FILED
JUL 27 1973
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-v- : NOTICE OF MOTION

: S. 73 Cr 606

PAUL CRAWFORD,
Defendant.

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SIRS:

PLEASE TAKE NOTICE that upon the annexed ~~affirmation~~ AFFIDAVIT of JOSEPH T. KLEMPNER the undersigned will move this Court on the ~~27~~ 10th day of ~~July~~ AUGUST, 1973, at 10 o'clock in the forenoon, in the Courtroom of the Honorable Charles M. Metzner, United States District Judge for the Southern District of New York, United States Courthouse, Foley Square, New York, New York, for the following Discovery and Inspection:

1. a copy or transcript of any admission or confession or other statement made by the defendant PAUL CRAWFORD;

2. a copy or transcript of any admission or confession or other statement made by any co-defendant that in any way describes or concerns the defendant PAUL CRAWFORD with respect to the alleged conspiracy;

3. a copy or transcript of any admission or confession or other statement made by any co-conspirator that in any way describes or concerns the defendant PAUL CRAWFORD with respect to the alleged conspiracy; and

4. a copy or transcript of any admission or confession or other statement made by any other defendant or co-conspirator.

Dated: New York, New York
July 26, 1973

YOURS, Etc.,

JOSEPH T. KLEMPNER
Attorney for PAUL CRAWFORD
401 Broadway
New York, New York 10013
925-3177

To: PAUL CURRAN, Esq.
United States Attorney
Southern District of
New York
United States Courthouse
Foley Square
New York, New York 10007

76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA

-v-

PAUL CRAWFORD,

Defendant.

----------x

~~AFFIRMATION~~ AFFIDAVIT

JOSEPH T. KLEMPNER affirms and states:

1. I am the attorney for the defendant PAUL CRAWFORD, having been assigned by the Court. I am fully familiar with the facts and circumstances herein.

2. On information and belief, the Government has in its possession a statement or statements made by the defendant PAUL CRAFORD with respect to his participation (and/or lack of participation) in the alleged conspiracy. On information and belief, the Government also has in its possession statements made by other defendants and other co-conspirators not named as defendants in the indictment. Some or all of these statements are presumed to mention PAUL CRAWFORD and his relationship (or lack of relationship) to the alleged conspiracy.

3. Access to all of these statements is necessary so that counsel can determine if there is a need to bring further motions (i.e., Suppression, Severance), and so that counsel and his client can intelligently prepare for trial.

WHEREFORE, the undersigned respectfully prays that his motion for Discovery and Inspection be granted in all respects, along with any other and further relief that the Court deems just and proper.

Joseph T. Klempner
JOSEPH T. KLEMPNER

Dated: New York, New York
July 26, 1973

SWORN TO BEFORE ME THIS 27th DAY OF JULY, 1973.
Karen M. Thomson

KAREN M. THOMSON
Notary Public, State of New York
No. 41-3327107 Queens County
Commission Expires March 30, 1974

United States v. Thomas Joseph Carroll,
et al., 73 Cr. 606

This motion by defendant Paul Crawford is granted as to Item 1; otherwise denied.

The government shall furnish the above information on or before August 10, 1973.

So ordered.

Dated: New York, N. Y.
August 6, 1973

Charles H. Metzner
U. S. D. J.

WITHDRAWN FORWARDED

U.S. DISTRICT COURT FILED JUL 27 1973 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA : PRE-TRIAL MOTIONS FOR DEFENDANT CHESTER CRAWFORD

-v- :

THOMAS JOSEPH CARROLL, et al., : 73 Cr. 606

Defendants. :

- x

CHESTER CRAWFORD, a defendant herein, hereby moves this Court, by his undersigned attorney, Jay Gold, for pre-trial relief as follows:

I

An order directing the United States Attorney to serve and file a bill of particulars of the indictment herein setting forth the following:

WITH RESPECT TO COUNT ONE:

a. The names and addresses of those persons known to the Grand Jury to have been co-conspirators but not named in the indictment.

b. The names and addresses of those persons unknown to the Grand Jury, but now known to the government to have been co-conspirators.

c. Regarding Overt Act No. 1 - The place where it will be claimed Meyers and the Crawfords met prior to going to the vicinity of Wall Street, the time of day of the arrival at Wall Street, and the names of other persons present, if any.

d. Regarding Overt Act Nos. 2 and 3 - The time of day of the meetings alleged, and the names of other persons present, if any.

WITH RESPECT TO COUNTS TWO AND THREE:

a. The specific places and times it will be claimed the defendants committed the acts alleged.

b. Whether it will be claimed that the defendant Chester Crawford actually committed the acts alleged or whether he is charged as an aider or abettor.

c. Whether it will be claimed that the defendant Chester Crawford was present or was in the vicinity of, and participated in the acts alleged, and, if so, his exact location.

II

Discovery and Inspection, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, and pursuant to 18 U.S.C. 3432, and pursuant to the standards of Due Process set forth in Brady v Maryland, 373 U.S. 83 (1963), as follows:

a. An order requiring the government to produce for inspection, copying and recording:

1. Any and all purported confessions, admissions or statements allegedly made by the defendant to officers or agents of the government or to persons acting in behalf of or at the request of the Government, whether or not such are reduced to writing, or recorded by any means, so long as the same are within the custody, possession or control of the Government;

2. Any and all statements made by any of the co-defendants herein, dealing with the subject matter of the indictment, and made to any agency or employee of the government, whether formal or informal, so long as such statements may be part of the Government's proof at trial;

3. Results and reports of any scientific tests in the possession of the government, made in connection with the subject matter of the indictment;

4. Any and all books, papers, documents, and tangible objects which have been seized, received or otherwise obtained from any of the defendants herein.

b. An order requiring the government to furnish the defendant with:

1. A list of the names and addresses of the government witnesses to be produced on the trial, any statements made by them in the government's possession, and their grand jury testimony, if any.

2. Copies of any prior convictions and of any pending criminal charges against said witnesses, and a statement setting forth any known criminal investigations of which said witnesses are subjects.

3. A statement disclosing any consideration promised or shown or immunity granted to any of said witnesses in connection with this case;

4. A statement disclosing any information in the government's possession which may be of material value to the defense, the practical value of which would be significantly diminished if learned by the defense for the first time at trial;

5. A statement disclosing all information in the government's possession concerning the subject matter of this indictment, but which the government does not intend to introduce into evidence upon the trial of this action, and which may be of material value to the defense.

III

An order requiring the United States Attorney to disclose to this Court and defense counsel whether the defendant was at any time the subject of electronic surveillance or eavesdropping or recording, or the use of any hearing devices, which resulted in any officer, agent or employee of the government or person acting at their behest and direction overhearing or intercepting or recording any conversation, word or speech by the defendant and, if so, the time and place of such electronic surveillance, etc., and copies of all logs, memoranda, reports and court orders entered in connection therewith.

IV

An order requiring the government to make available for interview by defense counsel all incarcerated prospective government witnesses.

V

An order permitting the defendant Chester Crawford to join in each and every motion made in behalf of the co-defendants herein and granting the defendant Chester Crawford any discovery

or relief granted to any or all of said co-defendants to the extent that such would be appropriate to him, and for such other and further relief as to the Court may seem just and proper.

DATED: NEW YORK, NEW YORK
July 27, 1973

Respectfully submitted,

JAY GOLD
36 West 44th Street
New York, New York 10036
869-8338
Attorney for Chester Crawford

Jay Gold

U.S. DISTRICT COURT
FILED
AUG 6 1973
S.D. OF N.Y.

United States v. Thomas Joseph Carroll et al., 73 Cr. 606

Defendant Chester Crawford's motion for a bill of particulars is disposed of as follows:

I(a)-(d) and II(c) are granted to the extent consented to by the government; II(a) and (b) granted on consent.

The motion for discovery is disposed of as follows:

II(a)(1) granted to the extent consented to by the government; II(a)(2) denied; II(a)(3) granted to the extent consented to by the government; II(a)(4) granted on consent; II(b)(1) granted to the extent directed by United States v. Baum, F.2d (2d Cir.) the government shall inform the court in camera by affidavit filed on or before August 7, 1973 of the specific grounds on which it relies to withhold any such information; otherwise denied; II(b)(2) granted as to prior convictions or pending charges, otherwise denied; II(b)(3) denied; II(b)(4) and (5) the government shall furnish "Brady" material if it exists; III. granted; IV. granted to the extent consented to by the government; V. granted to the extent that such information was furnished any other defendant.

The government shall furnish the above information on or before August 10, 1973.

So ordered.

Dated: New York, N. Y.
August 6, 1973

Charles M. Metzner
U. S. D. J.

MEMO. ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S. DISTRICT
JUL 27 1973
S. D. OF N. Y.

2324a

UNITED STATES OF AMERICA, : Indictment No. S 73 Cr. 606

-against- :

THOMAS JOSEPH CARROLL, et al.: NOTICE OF MOTION: FOR BILL OF PARTICULARS AND FOR DISCOVERY AND INSPECTION

Defendants. :

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of DONALD A HOPPER, sworn to the 26th day of July, 1973 and all prior proceedings herein, defendant VINCENT MC CLOSKEY, will move before the HON. CHARLES M. METZNER, United States District Judge, for the Southern District of New York, at the United States Courthouse, Foley Square, New York, New York, at a date and time to be hereinafter set by the Court:

1. For an order pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure directing the government to furnish a Bill of Particulars;

2. For an order pursuant to Rule 16 of the Federal Rules of Criminal Procedure permitting the defendant, MC CLOSKEY, to inspect and copy documents in the possession of the government;

and for such other and further relief as to the Court may seem just and proper.

Dated: Queens, N. Y.
July 26, 1973

Yours, etc.,

DONALD A. HOPPER,
Attorney for Defendant,
Office and P. O. Address
29-27 41st Avenue
Long Island City, New York 11101
Tel.: (212) 786-0555

78

TO:

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, : Indictment No. S 73 Cr. 606

- against - :

THOMAS JOSEPH CARROLL : DEMAND FOR BILL OF PARTICULARS

Defendants. :

----------x

Defendant, VINCENT MC CLOSKEY, moves pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure for an order directing the United States Attorney for the Southern District of New York to serve and file a bill of particulars herein as follows:

WITH RESPECT TO COUNT ONE OF THE INDICTMENT

1.

(a) State the location other than the Southern District of New York where the Government will claim MC CLOSKEY and the co-conspirators allegedly conspired.

(b) State the date on which MC CLOSKEY or any co-conspirator withdrew from the alleged conspiracy.

(c) State the date upon which the alleged conspiracy terminated.

(d) State whether there was an express agreement to conspire. If so, state whether the agreement was written or oral. If oral, set forth the exact words spoken by each party to the alleged agreement, or the substance thereof, the date on which they were spoken, the place where they were spoken, and the identities of those present. If the alleged agreement or any part thereof was reduced to writing or is evidenced by any writing, set forth a copy of such writing or writings.

(e) State the name and address of each alleged co-conspirator known to the grand jury but not listed by name in the indictment.

(f) Set forth a description of all of the alleged co-conspirators whose identity remains unknown to the government.

(g) State the manner in which it is claimed that defendant, MC CLOSKEY, participated in the alleged conspiracy and the duration of his participation therein.

(h) Identify each overt act not enumerated in the indictment concerning which the government intends to offer evidence upon the trial.

(i) State the manner in which each overt act as to which the government intends to offer evidence furthered the objects of the conspiracy.

(j) State the dates, places and times of day that MC CLOSKEY is intended to have been present as to each overt act as to which the government intends to offer evidence upon the trial.

WITH RESPECT TO COUNT TWO
OF THE INDICTMENT

2.

(a) State the place where, and time, it is contended that the defendants committed the act set forth in Count Two.

(b) State whether it is contended that MC CLOSKEY actually was present and took part in the act set forth in Count Two or whether he is charged as an abettor. State the same information as to each of the other defendants.

(c) State the names and addresses of all persons known by the government to have witnessed the act set forth in Count Two, or any part thereof, and as to each state whether the government intends to produce such person upon the trial.

WITH RESPECT TO COUNT THREE
OF THE INDICTMENT

3.

(a) Set forth all hospital reports and physicians' reports concerning the treatment of the wounds alleged to have been sustained by CRAWFORD LAWRENCE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

THOMAS JOSEPH CARROLL, et al, :

Defendants. :

----------x

Indictment No. S 73 Cr. 606

DISCOVERY AND INSPECTION

Defendant, VINCENT MC CLOSKEY, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, moves for discovery and inspection of the following items:

1. All written or recorded statements relevant to the indictment made by MC CLOSKEY or any of the co-defendants or co-conspirators, whether made to an Assistant United States Attorney or any other agency or department of the Government, or any other person, the existence of which is known or by the exercise of due diligence may become known to the United States Attorney, and all notes and records of any such conversation.

2. All recorded statements made by MC CLOSKEY or any co-defendant or co-conspirator over the telephone or otherwise, and obtained by the Government through the use of electronic or other listening devices, if there be such, and if the Government has not obtained any such statements, then a statement by the United States Attorney that the Government has obtained none.

3. All statements and records reflecting any interception of mail matter or other matter directed to or sent by MC CLOSKEY or any co-defendant or co-conspirator, if there be such, and if the Government has not obtained any, then a statement by the United States Attorney that the Government has obtained none.

4. All results or reports of scientific tests or experiments made in connection with this case or copies thereof, the existence of which is known, or by the exercise of due diligence may become known to the United States Attorney, and if the

Government has not obtained any such, then a statement by the United States Attorney that the Government has obtained none.

5. The recorded testimony before the grand jury of any co-defendant or co-conspirator.

6. All memoranda, documents or other writings relating to or purporting to represent any of the agreements between any of the defendants and/or any of the co-conspirators referred to in the indictment.

7. All evidence in the possession, custody or control of the government favorable to MC CLOSKEY, including but not limited to, statements of persons who witnessed the acts alleged in Counts Two and Three and which said statements are in any manner different or inconsistent with statements made by persons whom the government intends to call as witnesses upon the trial.

8. All books, papers, documents and objects which were taken from the possession of the defendants and are now in the possession, custody or control of the government, the existence of which is known or by the exercise of due diligence may become known to the government.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

THOMAS JOSEPH CARROLL, et al.: AFFIDAVIT

Defendants. :

----------x

Indictment No. S 73 Cr. 606

STATE OF NEW YORK)
: ss.:
COUNTY OF QUEENS)

DONALD A. HOPPER, being duly sworn, deposes and says:

1. I am the Attorney for the defendant VINCENT MC CLOSKEY and submit this affidavit in support of his motion for a Bill of Particulars and Discovery and Inspection.

2. The grounds for the relief requested herein are as follows:

(a) The indictment herein is couched in conclusions and generalities requiring a particularization in order to provide MC CLOSKEY a reasonable opportunity to prepare his defense.

(b) The particularization of the government's claims would not appear to prejudice the government in any manner.

(c) All items requested are relevant and necessary to the preparation of a proper defense.

3. The charges against MC CLOSKEY are grave and, it is submitted, warrant full, liberal and complete disclosures. While this is true with regard to all of the items requested, it is paricularly true with respect to defendant's request to inspect and copy the statements made by the other defendants in this case. MC CLOSKEY is implicated in the statements of the actual gunmen who perpetrated the crime. MC CLOSKEY denies his guilt. In the interest of justice your deponent should be afforded a reasonable opportunity to investigate the charges these two defendants make

against MC CLOSKEY in order that proof, if available, can be produced upon the trial to refute these charges. Given the gravity of the offense this would not appear to be an unreasonable request.

WHEREFORE, it is respectfully requested that the relief prayed for be granted in all respects.

Donald A Hopper

Donald A. Hopper

Sworn to before me this
26th day of July, 1973

Frances Farley

FRANCES FARLEY
Notary Public, State of New York
No. 41-6234225 · Queens County
Commission Expires March 30, 1974

9466 N.Y. RE

United States v. Thomas Joseph Carroll
et al., 73 Cr. 606

Defendant McCluskey's motion for a bill of particulars is disposed of as follows:

1(a)-(d) denied; 1(e) granted to the extent consented to by the government; 1(f)-(i) denied; 1(j) granted to the extent consented to by the government; 2(a) and (b) granted on consent; 2(c) granted to the extent directed by United States v. Baum, F.2d (2d Cir.). The government shall inform the court in camera by affidavit filed on or before August 7, 1973 of the specific grounds on which it relies to withhold any such information; 3(a) granted to the extent consented to by the government.

MICROFILM

The motion for discovery is disposed of as follows:

1. granted as to movant's statements only; 2. granted to the extent that there were such wiretaps and movant is an aggrieved party as defined in 18 U.S.C. § 2510(11); 3. granted without objection; 4. granted to the extent consented to by the government; 5. and 6. denied.

7. the government shall furnish "Brady" material if it exists; 8. granted solely as to movant's papers, etc.

The government shall furnish the above information on or before August 10, 1973.

So ordered.

Dated: New York, N. Y.
August 6, 1973

Charles M. Metzner
U. S. D. J.

2334a

U.S.A. v. Robert E. Rippy

FOR: Southern District of N.Y.

AT: New York City

LOCATION NUMBER: 39.01

PROCEEDING (Attach specific charge):

Pending trial

1 ☒ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify below)

DISTRICT COURT NUMBER
Magistrate
District Court: 73 Cr. 606
Court of Appeals

PERSON REPRESENTED (show full name & status, & check box →)

Robert E. Rippy

Name already appears as ☐ PI or as ☒ Df above

ATTORNEY'S STATEMENT

As the attorney for the "person represented" who is named above, I hereby affirm that: (1) the services or expenditures described in the section to the right are necessary to an adequate legal representation or defense in this case, and (2) the "person represented" affirms that he or she is unable to pay for the cost of these services. I therefore request authorization to obtain or incur them at the cost of the United States.

ATTORNEY'S SIGNATURE Date

SUCH SERVICES TO BE PROVIDED BY

NAME: John E. McNally

TITLE OR ORGANIZATION: Investigator

TELEPHONE NO: 356-8358

COURT ORDER

Financial inability of the "person represented" has been established to the court's satisfaction and authorization requested above is hereby granted.

Signature of Judge or Magistrate Date

SPECIAL AUTHORIZATIONS

PORTION	% TRANSCRIPT COST	Judge's Initials
STH:		
NDINGS (e.g. pauperism, non-frivolousness, potential question). IF REQUIRED BY U.S.C. 753 HAVE BEEN ESTABLISHED		
AILY TRANSCRIPT APPROVED		

CERTIFICATIONS OF ATTORNEY

☐ TRANSCRIPT WAS RECEIVED
☐ I RECOMMEND PAYMENT TO CONTRACTOR OF AMOUNT CLAIMED
☐ PAY ME BECAUSE, AS COPY OF MY ATTACHED CHECK OR RECEIPT SHOWS, I PAID FOR TRANSCRIPT

SIGNATURE OF JUDGE/MAGISTRATE

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS

If transcript requested, of what proceeding: | Kind of expert, if "other"

Check category (white box) above and briefly describe below the service or expense and justifying reason for request. Reason may be in separate statement sealed by court

ESTIMATED TOTAL COST

Estimated cost for investigative services exclusive of investigator's expenses. Statement of reasons is set forth in separate affirmation sent by attorney to the Court.

FOR SERVICES: $300.00

FOR EXPENSES: $

TRANSCRIPT

		No. Pages	Per Pg.	Extension	Deduct Amt. Apportioned
ESTIMATED TRANSCRIPT COST	ORIG		$	$	$
	COPIES		$	$	$

FOR TRANSCRIPT: $

*Excludes free copy for clerk of court

VOUCHER

**See instructions as to page rates

ACTUAL TRANSCRIPT COST	ORIG		$	$	$
	COPIES		$	$	$

FOR TRANSCRIPT: $

SERVICES EXPENSES

#

SUB TOTALS

FOR SERVICES: $

FOR EXPENSES: $

TOTAL CLAIM

U.S. DISTRICT COURT FILED JUL 23 1973 S.D. OF N.Y.

I swear and affirm the correctness of above statements

SIGNATURE OF CONTRACTOR/PAYEE Date

$

SIGNATURE OF ATTORNEY Date

Date

$

USE ADDITIONAL BLANK SHEETS IF MORE SPACE IS NEEDED

VOUCHER NUMBER 20553

014-26-2155

PERSON OR ORGANIZATION

John E. McNally

ADDRESS

ZIP CODE

AT THE TIME OF AUTHORIZATION PLEASE TYPE OR PRINT CLEARLY THE NAME OF PERSON OR ORGANIZATION PROVIDING SERVICE (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

79

Copy B – Filed in court clerk's office as soon as service is authorized

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA :

-v- :

THOMAS JOSEPH CARROLL, et al., : 73 Cr. 606

Defendants. :

- -x

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT RIPPY'S MOTION
FOR DISCOVERY

Because of the gravity of the offense charged here, this is not the usual case in which the quantum of discovery to be meted out by the government is litigated. Defendant Rippy is charged with a capital offense; if convicted of murder, the penalty is death or life imprisonment (18 U.S.C. §§1111, 1114). The starting point for any discussion of discovery where, as here, the ultimate of penalties confronts the defendant, must be that absent some compelling reason advanced by the government, reasonable discovery requests made by defendant to enable his counsel to prepare adequately for trial should be granted. Fairness dictates no less than this. Defendant Rippy's discovery requests are both limited and reasonable.

Concerning Names and Addresses of Witnesses
(Discovery Requests Numbers 1 and 3)

Title 18 U.S.C. §3432 provides:

> "A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the ... witnesses to be produced on the trial for proving the indictment."

Concededly, the Supreme Court ruling in Furman v. Georgia, 92 S.Ct. Rptr. 2726 (June 29, 1972), renders the capital punishment provision here in question of dubious constitutionality. However, not having been ruled unconstitutional, that provision is still operative. Moreover, even if the death penalty provided in 18 U.S.C. §1111 was ruled unconstitutional by the court, without congressional amendment of §3432, that provision would still require that defendant be afforded the names of witnesses prior to trial in cases which Congress had defined as capital offenses.

Further, in United States v. Baum, F.2d (March 22, 1973), the Second Circuit reversed a non-capital conviction where the government, prior to trial, failed to disclose the names of witnesses as requested by defendant. Although the testimony of the witness in question there concerned the defendant's commission of prior criminal acts, the court forcefully noted the need for

pre-trial disclosure of government witnesses:

> "Ordinarily it is disclosure, rather than suppression, that promotes the proper administration of criminal justice .... There were no valid considerations to justify concealment of Greenhalgh's identity as a prospective witness.... Greenhalgh was in federal custody. Advance disclosure presented no possible source of danger to the witness or others. There was no thought that this witness would be reluctant to testify upon disclosure since he was a volunteer who solicited the government to call upon him in the hope of early release from confinement.3"

In footnote 3, the court stated:

> "Absent these factors, prevailing concepts of criminal justice oblige the prosecuting attorney to disclose to the defense the names and addresses of witnesses he intends to call at the trial. American Bar Association Standards Relating to Discovery and Procedure Before Trial §2.1(iv) (Approved Draft 1970); Proposed Rules of Federal Criminal Procedure §16(a)(1)(VI), 48 F.R.D. 553 (1970); 3 C. Wright, Federal Practice and Procedure (Criminal) §254, p. 514."

Unless the government can establish a compelling reason to bar disclosure here, Baum, particularly where applied to a charge as grave as that in the present case, requires disclosure of the government witnesses prior to trial.

In regard to the time prior to trial at which such disclosure is required, disclosure by the government

three days before trial - the minimum time provided in §3432 - is in reality no disclosure. Trial here is scheduled for Monday, September 10. Disclosure at a time three days before trial would come on the preceding Friday. Such eleventh hour discovery is meaningless. In view of the fact that trial is barely a month away, and doubtless the work schedules of various counsel in this case will be punctuated by vacation intervals during this period of time, it is respectfully requested that this Court order the government to bring its incarcerated witnesses to this Courthouse at a date no later than August 10 for defense counsel to have the opportunity of interviewing them and, where such witnesses are not incarcerated, disclose their names and addresses by August 10.

Concerning Grand Jury Testimony and Other Statements by Government Witnesses
(Discovery Request Number 2)

This request is fully supported by the American Bar Association Standards Relating to Discovery and Procedure Before Trial §§2.1(a)(i) and (iii), and the Commentary to these sections which states:

> "making available to the accused in advance of trial ... testimony of prospective witnesses against him at the trial is an appropriate invasion of traditional grand jury secrecy consistent with the investigative purpose for which such secrecy should otherwise be retained." (p. 66)

Concerning Persons Present at the Events in Question Who the Government does not Plan to Call as Witnesses
(Discovery Request Number 4)

The names of persons known by the government to have information relevant to the events in question or helpful to the defendant but whom the government does not plan to call as witnesses at trial should be disclosed to the defendant. Roviaro v. United States, 353, U.S. 53 (1957).

Concerning Criminal Charges Against Government Witnesses
(Discovery Request Number 9)

At trial defense counsel may properly question government witnesses about prior convictions for purposes of impeachment [United States v. Owens, 263 F.2d 720 (2nd Cir., 1959)], about pending indictments or arrests for purposes of showing bias resulting from expectancy of leniency [United States v. Bonanno, 430 F.2d 1060 (2nd Cir., 1970)], about investigations of which the witness is a target, also for the purpose of showing bias from the receipt or expectancy of receipt of favorable treatment by a government agency [see United States v. Wolfson, 437 F.2d 862 (2nd Cir. 1970); United States v. Padgent, 432 F.2d 701 (2nd Cir. 1970)].

In order to properly investigate this material and use it effectively on cross-examination of government witnesses, fairness requires that this information be

disclosed at a reasonable amount of time prior to trial. Otherwise, its use by defense counsel, sanctioned by the Second Circuit, may be thwarted. For example, where charges are pending against a witness in another jurisdiction, defense counsel, appropriately apprised of this fact, may order the minutes of any court proceedings to date in that case in an effort to determine whether any statements were made on the record by the court, prosecutor, defendant-witness, defense counsel, or anyone else suggesting favorable treatment by the defendant-witness in that case.

In sum, this is a serious case. Defendant deserves fully prepared counsel. A close to the vest policy of disclosure or last minute disclosure by the government can serve no legitimate purpose.

CONCLUSION

THE DISCOVERY REQUESTED BY DEFENDANT SHOULD BE GRANTED.

Respectfully submitted,

FREDERICK P. HAFETZ
Goldman & Hafetz
60 East 42nd St.
New York, N.Y. 10017
(212) 682-8337
Attorneys for Defendant
Robert E. Rippy

ATTORNEY'S AFFIRMATION
OF SERVICE BY MAIL

FREDERICK P. HAFETZ, an attorney admitted to practice in the State of New York, hereby affirms, under penalty of perjury, that on the 31st day of July, 1973, deponent served the within Memorandum of Law

upon John Kenney, Esq., Assistant United States Attorney, United States Courthouse, Foley Square, New York, New York, 10007

the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Frederick P. Hafetz

FREDERICK P. HAFETZ

File: S.D.N.Y. 73 Cr. 606

Warrant of Removal or Indictment

2342a
Cr. Form No. 14 (Rev. 10-61)

United States District Court

FOR THE

DISTRICT OF COLUMBIA

FILED
U.S. DISTRICT COURT
Jul 23 2 55 PM '73
S.D. OF N.Y.

UNITED STATES OF AMERICA
v.
PAUL CRAWFORD

No. D30-1313-73Cr

To THE UNITED STATES MARSHAL FOR THE DISTRICT OF COLUMBIA OR ANY OR EITHER OF HIS AUTHORIZED DEPUTIES

The grand jury of the United States for the Southern District of New York having indicted PAUL CRAWFORD on a charge of 18 U.S.C. 371, 1111, 1114 and 2 and 2114

PAUL CRAWFORD having been arrested in this District and, after waiving[1] hearing, having been committed by a United States ~~Commissioner~~ Magistrate to your custody pending h is removal to that district,

You are hereby commanded to remove PAUL CRAWFORD forthwith to the Southern District of New York and there deliver h im to the United States Marshal for that District or to some other officer authorized to receive h im.

Lawrence S. Margolis
U. S. MAGISTRATE

Dated at Washington, D.C. this 15th day of June 1973.

[1] Strike "waiving" if hearing was had.

RETURN

EASTERN District of VIRGINIA ss

Received the within warrant of removal the 17th day of June 1973 and executed same.

ISAAC C. HYLTON
U. S. Marshal.

By Edward C Cosey
Deputy Marshal.

U.S. MARSHAL, SDNY.
ORIGINAL
JUL 24 '73

87

2343a

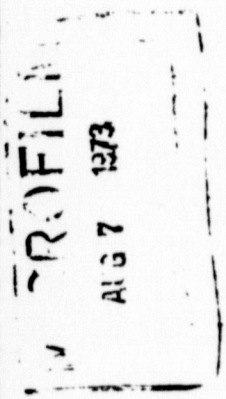
United States v. Carroll 73 Crim 606

The enclosed affidavit was submitted by the government pursuant to the court's direction that it explain why it would not divulge the names of witnesses.

The Court has read the affidavit and finds it sufficient to support the government's position.

This affidavit shall be sealed and delivered to the Clerk of the Court and not opened until further order of the Court.

So ordered.

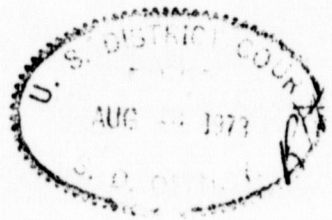


August 8, 1973

Charles M. Metzner
U.S.D.J.

82

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,	:	
vs.	:	
THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack", VINCENT MC CLOSKEY a/k/a "Mike", ROBERT RIPPY a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GODFFREY MATTHEWS MANN,	:	73 Cr 606 (CMM) NOTICE OF MOTION
Defendants.	:	

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of JAY GOLDBERG, attorney for VINCENT MC CLOSKEY, a motion will be made in this court at a time and place to be set by the Hon. Charles M. Metzner, U.S.D.J., for an order directing that Government counsel do the following:

(1) Assemble in folders for turnover to the defense only after the witness testifies, copies of all indictments now pending or concluded in the possession of the Government wherein Larry Dalia and John Turner, as well as any other person whom it is the intention of the Government to call as a witness on the trial, is or was a defendant, or alleged co-conspirator or aider and abettor.

(2) Assemble rap sheets of all such persons.

(3) Prepare a list of any pending or closed investigations known to the Government (not duplicative of above) and the witness in which any of the above persons has been or is a subject thereof, or a claimed aider and abettor, or conspirator, setting forth generally the nature of the investigation.

(4) Assemble in folders any other information known to the Government which bears adversely on the credibility of any of the above persons or evidences possible bias by any of them for the Government or hostility against the defendants.

(5) Such other relief as the Court deems proper.

Dated: New York, New York
August 14, 1973

Yours etc.,

JAY GOLDBERG
Attorney for McCloskey
Office & P.O. Address
299 Broadway
New York, New York 10007
(212) 374-1040

TO:

JOHN J. KENNEY
Assistant U.S. Attorney
U.S. Courthouse
Foley Square
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

vs. :

73 Cr 606 (CMM)

THOMAS JOSEPH CARROLL, :
JOHN DOE a/k/a "Jack",
VINCENT MC CLOSKEY a/k/a "Mike", : AFFIDAVIT
ROBERT RIPPY a/k/a "Ripp",
CHESTER CRAWFORD, :
PAUL CRAWFORD,
TERRENCE DEWEY MYERS and :
GODFFREY MATTHEWS MANN,
:
Defendants.
:

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

JAY GOLDBERG, defendant's attorney, being duly sworn deposes and says:

This motion is made simply to facilitate the orderly and speedy trial of this case. It does not seek any pre-trial relief, though there be sufficient enough authority to justify turnover of such material, exculpatory in nature, prior to trial. All that we seek, however, to accomplish by this motion is that when the Government has concluded its direct examination with respect to each of its witnesses there be then available to the defense needed material now in the possession of the Government with which to attack the credibility or to demonstrate possible bias of any of the witness' the Government chooses to call.

The case at bar involves several witnesses whose crimes, from general information received, have been many involving cases and investigations in several states and several judicial districts. The defense is entitled not only to use any prior convictions to adversely affect credibility, but if is made aware of pending matters or matters now closed which did not result in any indictment known to the witness, it may use such information to argue that the witness has a bias in favor of the Government.

When exploring possible bias it is critical to bring out to the jury any pending investigations known to the witness. The reason is that bias may be shown not only by the promise of favorable treatment but by developing any hope or expectation the witness harbors as to any matter pending against him. The defendant is not bound to simply ask the witness if he hopes for any favorable treatment in any matter without bringing out the nature of the charge since the jury should have the facts in order to determine whether "the truth is the opposite of (the witness's) story" as to bias. Dyer v. Mac Dougall, 201 F.2d 265 (2d Cir. 1952).

The issue of bias is never collateral and should be explored fully. U.S. v. Haggett, Y38 F.2d 396, 399 (2d Cir. 1971.) On this score there is also the need for any indictments to be furnished as prayed for in the notice of motion since

counsel should be able to explore how many counts were dropped in return for any pleas, (this relevant to bias or favor) or how many separate counts (separate crimes) a witness was convicted of in one trial (this on the standard issue of general impeachment.)

The Government it is clear, must turn over, after its direct, not only exculpatory material, but any information otherwise bearing adversely on the credibility of the witness it puts forward, Giles v. Maryland, 386 U.S. 66 (1967). So that there may be no trial delay the relief prayed for should be granted and Government counsel directed to now assemble and have available at the appropriate time such material in its possession as stated in the notice of motion.

There is precedent for this relief. In U.S. v. John Dioguradi, SDNY, 71 Cr 558, the defense knew it would be faced with witnesses against it whose criminal conduct was also wide-spread. As a result, on motion Chief Judge Edelstein directed the Government to have such material as we seek in the case at bar assembled by the Government and ready for turnover at the conclusion of the witness' testimony. Chief Judge Mishler on these same papers required this to be done in U.S. v. Ianniello, 71 Cr 923 (EDNY).

The prosecutor then should be directed to: (1) have available copies of all indictments whenever any witness he calls is named as a defendant, co-conspirator or aider and abettor,

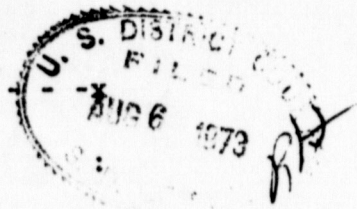
(2) all rap sheets, (3) prepare a list of all investigations pending or closed wherein any witness was the subject as a possible defendant. aider and abettor or co-conspirator, (4) list any other information adversely bearing on the witness' credibility or on the issue of possible bias.

JAY GOLDBERG

Sworn to before me this
14th day of August, 1973.

PHILIP GELFAND
NOTARY PUBLIC, STATE OF NEW YORK
No. 03-3600550
Qualified in Queens County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA :

- v - : AFFIDAVIT

THOMAS JOSEPH CARROLL,
JOHN DOE a/k/a "Jack",
VINCENT MC CLUSKEY a/k/a
"Mike", ROBERT E. RIPPY a/k/a
"Ripp", CHESTER CRAWFORD,
PAUL CRAWFORD, TERRENCE DEWEY MYERS
and GEOFFREY MATTHEWS MANN, : 73 Cr. 606 (CMM)

Defendants. :

COUNTY OF NEW YORK)
STATE OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN J. KENNEY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the Office of Paul J. Curran, United States Attorney for the Southern District of New York, and as such I am assigned to and familiar with the facts and prior proceedings in the above-captioned matter.

2. This affidavit is submitted in opposition to the pre-trial motions of Thomas Joseph Carroll ("Carroll"), Vincent Mc Cluskey a/k/a "Mike" ("Mc Cluskey"), Robert E. Rippy a/k/a "Ripp" ("Rippy"), Chester Crawford, Paul Crawford and Terrence Dewey Myers, ("Myers"), the defendants, except Geoffrey Matthews Mann, the defendant, has of this date not filed any pre-trial motions insofar as the requests have been consented to below.

The defendant Carroll requests: *

a. [an order] pursuant to Rule 16(a), Federal Rules of Criminal Procedure, permitting the defendant Thomas Carroll, to inspect and copy or photograph any relevant written or recorded statements made by him, or copies thereof, within the possession, custody or control of the Government, the existance of which is known, or by the exercise of due diligence may become known to the Government, including, but not limited to mechanical recordings or any tape, whether in the possession of the Government or any other agency or Department of the State of New York or the City of New York, who participated in the arrest of said defendant.

3. The government consents to this request insofar as it concerns written or recorded statements of the defendant Carroll made to agents of the government and in the possession of the government.

4. The government is not in possession of nor does it have knowledge of any electronic or other recording of Carroll or any other defendant at this time. A complete search of the government files is being made. At its conclusion, the government will file the results with the Court in affidavit form.

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* Myers' motion for discovery and inspection is nearly identical to Carroll's. The government's response to Carroll's motion is the same as to each item in all your motions.

5. The government has no knowledge of any statement by Carroll or any other defendant, recorded in either electronic or written form, which is in the possession of the State or City of New York, or any other State or City.

The defendant Carroll further requests:

b. [an order] pursuant to Rule 16(b). Federal Rules of Criminal Procedure, permitting defendant Thomas Carroll to inspect and copy or photograph any written or recorded statement or confession, made by the co-defendants including, but not limited to, any mechanical recording of any type. If the said relief is denied then the Government should be ordered to inform the defendant of the existence of any confession or statement, whether written or oral, made by the co-defendants, which would inculpate the defendant, Thomas Carroll. This request is made in order that the defendant may avail himself of the remedies of Bruton v. United States, 88 S. Cr. 1620. (1968)

6. The government opposes this request. Rule 16b specifically excludes the discovery of statements made by government witnesses or prospective government witnesses except as provided in 18 U.S.C. § 3500.

7. In addition, the government opposes the portion of this request seeking disclosure of confessions by other which inculpate Carroll. The government is fully aware of the structures of Bruton v. United States, supra, and its obligations under the line of cases following Bruton.

The defendant Carroll further requests:

c. [an order] pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure permitting the defendant Thomas Carroll to inspect and copy or photograph any written or recorded statement or confession made by any co-conspirator whether or not named in the Indictment, including, but not limited to any mechanical recordings of any type, relating to this Indictment.

8. The government opposes this request. Such statements are specifically excluded from discovery (see ¶ 6 above).

The defendant Carroll further requests:

d. [an order] pursuant to Rule 16(b) permitting the defendant, Thomas Carroll, to inspect and copy or photograph, any recordings, transcriptions and writings within the possession, custody and control of the Government derived directly or indirectly, from, or relating to the interception or overhearing of any telephone or other communication by the use of any wire tapping or eavesdropping device or technique, and which are relevant to the allegations of the Indictment herein or were the source, in whole or in part, of any of the Government's evidence or information relating to the said Indictments.

9. The government opposes this request with respects to any overhearing . . . . which is not of Carroll himself or which is not the result of electronic surveillance directed at Carroll. The government respectfully refers the Court to ¶ 4 above.

The defendant Carroll further requests:

e. [an order] permitting the defendant Thomas Carroll to inspect and copy or photograph all evidence in the possession, custody or control of the Government favorable to the said defendant pursuant to Brady v. Maryland, 373 U.S. 83, S. Ct. 1184, (1963).

10. The government is aware of its obligation under Brady v. Maryland, and the cases following. It is not in possession of material within the preview of that case at this time. If the government should come into the possession of such material it will make it known to the defendant and the Court at the appropriate time prior to trial.

The defendant Carroll further requests:

f. [an order] (1) directing the United States Attorney to produce and make available for inspection the reports of any chemical or other scientific tests including fingerprints, or analysis conducted by any means including but not limited to the use of ultra-violet or intra-red forms of light.

(2) detailed reports and/or results of post mortem examinations and of scientific tests or experiments made in connection with the autopsy and connected examinations of William Hickey, deceased. This includes, but is not limited to taxicologists' reports and of any scientific tests or experiments made in connection with the particular case involved in the instant indictment. This likewise, applies to copies thereof, within the possession, custody or control of the United States Attorney,

the existence of which is known, or by the exercise of due diligence may become known to the prosecutor.

(3) photographs, if any, taken of the deceased person, as well as all photographs taken, or duplicates thereof, in connection with this case, within the custody, possession or control of the prosecuting attorney, the existence of which is known, or by the exercise of due diligence may become known to him.

(4) any and all hospital reports, if any, concerning William Hickey, on/or about April 5th, 1973.

11. The government consents to make available to the defendant for inspection and copying the results or reports of all scientific tests made in connection with this case within the possession custody or control of the government and the existence of which is known or by the exercise of due diligence may become known to the attorney for the government. The government does not consent to make available such reports which are not and have not been in its possession, custody and control.

12. The government is presently in possession of the autopsy report of the New York County Medical Examiner on William Hickey as well as certain fingerprint analysis and will make these immediately available to all defendants for inspection and copying. If the government comes into possession of other such scientific reports or of photographs, it will notify all defendants and follow the same procedure.

The defendant Carroll further requests:

g. [an order] pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure permitting the defendant Thomas Carroll to inspect and copy or photograph any books, papers, documents, tangible objects or copies thereof which were taken from the possession of the defendant and are now in the possession, custody or control of the Government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the Government.

13. The government consents to this request and states, insofar as the government is presently aware the only such objects it has were taken from the possession of Carroll at the time of his arrest. This is true as to each of the defendants in the indictment.

The defendant Mc Cluskey requests:

All written or recorded statements relevant to the indictment made by Mc Closkey or any of the co-defendants or co-conspirators, whether made to an Assistant United States Attorney or any other agency or department of the Government, or any other person, the existence of which is known or by the exercise of due diligence may become known to the United States Attorney, and all notes and records of any such conversation.

14. The government consents to this request only insofar as it relates to statements made by Mc Closkey to agents of the government. The government opposes this request in all other respects and respectfully refers the Court to ¶ 6 and 7 above.

The defendant Mc Closkey further requests:

All recorded statements made by Mc Closkey or any co-defendant or co-conspirator over the telephone or otherwise, and obtained by the Government through the use of electronic or other listening devices, if there be such, and if the Government has not obtained any such statements, then a statement by the United States Attorney that the Government has obtained none.

15. In response to this request, the government respectfully refers the Court to ¶ 4 and 9 above.

The defendant Mc Closkey further requests:

All statements and records reflecting any interception of mail matter or other matter directed to or sent by Mc Closkey or any co-defendant or co-conspirator, if there be such, and if the Government has not obtained any, then a statement by the United States Attorney that the Government has obtained none.

16. The government neither consents to nor opposes this request but states that insofar as it is presently aware no such statements or records exist nor was any such interception of mail conducted in connection with this case.

The defendant Mc Closkey further requests:

All results or reports of scientific tests or experiments made in connection with this case or copies thereof, the existence of which is known, or by the exercise of due diligence may become known to the United States Attorney, and if the Government has not obtained any such, then a statement by the United States Attorney that the Government has obtained none.

17. In response to this request, the government respectfully refers the Court to ¶ 11 and 12 above.

The defendant Mc Closkey further requests:

The recorded testimony before the grand jury of any co-defendant or co-conspirator.

18. The government opposes this request and respectfully refers the Court to ¶ 6 above.

The defendant Mc Closkey further requests:

All memoranda, documents or other writings relating to or purporting to represent any of the agreements between any of the defendants and/or any of the co-conspirators referred to in the indictment.

19. The government neither consents to nor opposes this request but states it has no present knowledge of any such memoranda, documents or other writing.

The defendant Mc Closkey further requests:

All evidence in the possession, custody or control of the government favorable to Mc Closkey, including but not limited to, statements of persons who witnessed the acts alleged in Counts Two and Three and which said statements are in any manner different or inconsistent with statements made by persons whom the government intends to call as witnesses upon the trial.

20. The government treats this request as one for "Brady" material and respectfully refers the Court to ¶ 10 above.

The defendant Mc Closkey further requests:

All books, papers, documents and objects which were taken from the possession of the defendants and are now in the possession, custody or control of the government,

diligence may become known to the government.

21. The government consents to this request and respectfully refers the Court to ¶ 13 above.

The defendant Rippy requests:

Names and addresses of all government witnesses to be furnished no later than August 3, 1973.

22. The government opposes this request. The present case does not charge the defendants with a capital offense. The indictment charges conspiracy as well as two substantive counts informing the defendant of the six people with whom the government will prove he acted in concert. The government has consented to file a bill of particulars informing the defendant of unnamed co-conspirators presently known to the government as well as giving in greater detail the time and place where the acts charged in the indictment took place. (infra).

23. There is no present need for the defendants to know the identity of each witness the government will call at trial. There is no element of suprise here. The defendants are sufficiently informed as to the charges to prepare a defense.

24. In addition, the very defendants who seek the names of all government witnesses are charged with the armed robbery of a United States mail truck and the murder of a postal guard. In the light of these surrounding facts, the names of persons willing to testify against these defendants should not be revealed in advance of trial absent and compelling reason to the contrary. The government's position is more fully set forth in the accompanying memorandum of law.

The defendant Rippy further requests:

Grand Jury testimony of all such persons.

25. The government opposes this request and respectfully refers the Court to ¶ 6 above.

The defendant Rippy further requests:

Names and addresses of all witnesses who will give testimony as to commission of prior crimes by defendant, to be furnished no later than August 3, 1973.

26. The government neither opposes nor consents to this request but states that it has no present intention of presenting testimony as to the commission of a prior crime by the defendant Rippy.

27. As to the other defendants named in the indictment, the government makes the same statement, except insofar as it may choose to prove prior crimes which were an integral part of and in furtherance of the conspiracy charged in Count One of the Indictment.

The defendant Rippy further requests:

Names and addresses of persons present at and having information relevant to the transactions as to which the government plans to present evidence at trial but whom the government does not intend to call as witnesses at trial.

28. The government opposes this request.

The defendant Rippy further requests:

All oral written or recorded statements, including notes or transcripts thereof, whether exculpatory or inculpatory, made by defendant Rippy, including all such statements made to a third person, thereafter told by said third person to a public servant and then reduced to writing

by that public servant as part of said third person's statement which are within the possession, custody or control of any law enforcement agency, including, but not limited to, transcripts, logs and actual recordings of such statements obtained by the government through the use of electronic surveillance or any mechanical devices.

29. The government consents to this request insofar as it will make available to the defendant Rippy statement made by him to an agent of the government and subsequently reduced to writing. All other aspects of this request are opposed by the government.

30. Insofar as this request relates to electronic surveillance, the government respectfully refers the Court to ¶ 4 above.

The defendant Rippy further requests:

All books, records, papers, documents memoranda, tangible objects or copies of portions thereof including but not limited to, logs, transcripts and actual recordings of statements obtained by the government through the use of any electronic surveillance or any mechanical devices relevant to the investigation or prosecution of this case, which are within the possession, custody or control of any enforcement agency.

31. The government opposes this request and respectfully refers the Court to ¶ 4 and 9 above.

The defendant Rippy further requests:

The results or reports of any physical or mental examinations, scientific tests or experiments involved in or in any way related to the instant case.

32. The government consents to this request only in so far as is set forth in ¶ 11 and 12 above.

The defendant Rippy further requests:

A copy of prior convictions of defendant Rippy and any pending charges against him other than this indictment.

33. The government consents to this request but states that it cannot vouch for the completeness of Rippy's criminal record in its possession. The government is aware of its continuing obligation to disclose under Rule 16(g), Federal Rules of Criminal Procedure.

The defendant Rippy further requests:

A copy of prior convictions and any pending charges against government witnesses and a statement of all government investigations of which said witnesses are a target.

34. The governments consents to this request only insofar as it will turn over to the defendant at the time of trial the record of prior convictions of government witnesses who testify at trial. The government opposes all other aspects of this request.

The defendant Chester Crawford requests:

1. Any and all purported confessions, admissions or statements allegedly made by the defendant to

officers or agents of the government or to persons acting in behalf of or at the request of the Government, whether or not such are reduced to writing, or recorded by any means, so long as the same are within the custody, possession or control of the Government.

35. The government consents to this request but only insofar as such statements have been reduced to writing or recorded.

The defendant Chester Crawford further requests:

2. Any and all statements made by any of the co-defendants herein, dealing with the subject matter of the indictment, and made to any agency or employee of the government, whether formal or informal, so long as such statements may be part of the government's proof at trial.

36. The government opposes this request and and respectfully refers the Court to ¶ 6 above.

The defendant Chester Crawford further requests:

3. Results and reports of any scientific tests in the possession of the government, made in connection with the subject matter of the indictment.

37. The government consents to this request only insofar as is set forth in ¶ 11 and 12 above.

The defendant Chester Crawford further requests:

4. Any and all books, papers, documents, and tangible objects which have been seized, received or otherwise obtained from any of the defendants herein.

38. The government consents to this request and respectfully refers the Court to ¶ 13 above.

The defendant Chester Crawford further requests:

b1. A list of the names and addresses of the government witnesses to be produced on the trial, any statements made by them in the government's possession, and their grand jury testimony, if any.

39. The government opposes each of these requests and respectfully refers the Court to ¶¶ 6, 22, 23 and 24 above.

The defendant Chester Crawford further requests:

b2. Copies of any prior convictions and of any pending criminal charges against said witnesses, and a statement setting forth any known criminal investigations of which said witnesses are subjects.

40. The government consents to this request only insofar as is set forth in ¶ 34 above.

The defendant Chester Crawford further requests:

b3. A statement disclosing any consideration promised or shown or immunity granted to any of said witnesses in connection with this case.

41. The government consents to give such a statement to the defendant at the time of trial.

The defendant Chester Crawford further requests:

b4. A statement disclosing any information in the government's possession which may be of material value to the defense, the practical value of which would be significantly diminished if learned by the defense for the first time at trial.

b5. A statement disclosing all information in the government's possession concerning the subject matter of this indictment,but which the government does not intend to introduce into evidence upon the trial of this action, and which may be of material value to the defense.

42. The government treats both of these as requests for "Brady" material and respectfully refers the Court to ¶ 10 above.

The defendant Paul Crawford requests:

1. A copy or transcript of any admission or confession or other statement made by the defendant PAUL CRAWFORD.

43. The governments consents to this request.

The defendant Paul Crawford further requests:

2. A copy or transcript of any admission or confession or other statement made by any co-defendant that in any way describes or concerns the defendant PAUL CRAWFORD with respect to the alleged conspiracy.

3. A copy or transcript of any admission or confession or other statement made by any co-conspirator that in any way describes or concerns the defendant PAUL CRAWFORD with respect to the alleged conspiracy; and

4. A copy or transcript of any admission or confession or other statement made by any other defendant or co-conspirator.

44. The government opposes each of these three requests and respectfully refers the Court to ¶¶ 6, 7 and 8.

JJK:ets

BILL OF PARTICULARS

2366a

As to Count One in the indictment the defendant Carroll* requests:

a. State the names of all co-conspirators not named in the Indictment, known to the attorney for the Government, and their addresses at the time of their alleged participation.

b. State any overt acts not enumerated in the Indictment concerning which acts the Government intends to offer evidence upon the trial of the Indictment herein.

c. State the exact date when, the place where, with whom and in what manner the defendant THOMAS CARROLL, initially entered into the conspiracy alleged and the duration of his participation herein.

d. State whether as to any acts alleged in the Indictment, or as to any acts or conversation intended to be relied upon by the Government at the trial, even though not alleged in the Indictment, (i) such acts or conversations were had at the instance of the Government and (ii) whether any person including any defendant or co-conspirator known to the Government regardless of whether named in the Indictment participating in or who arranged for any such act or conversation was acting at the instance or on behalf of the Government and if so, identify such individual or individuals, state when, where and with whom they did so and state whether such individual or individuals were directly or indirectly receiving or promised any money or benefit of any kind from the Government.

e. State in what manner each overt act furthered the objects of the conspiracy.

f. Set forth the specific dates, times and places that the defendant THOMAS CARROLL was present as to each of the overt acts, allegedly constituting the conspiracy.

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* The motion by Myers again parallels the motion by Carroll. This response is to be taken as the government's response to Myers as well.

JJK:ilf

45. The government consents to requests a and f and opposes requests b, c, d and e on the grounds that the items requested are outside the scope and intent of a bill of particulars. The information sought includes both the governments evidence and trial theory and is not necessary to inform the defendant of the charges against him or to allow the defendant to plead double jeopardy in a subsequent prosecution against him. The government's position is more fully set out in the accompanying memorandum of law.

As to Count two in the indictment, the defendant Carroll requests:

AS TO COUNT 2

g. state exactly where in the Southern District of New York the defendants did commit the act set forth in Count 2;

h. state with more specificity the occasions on which the defendants did commit the act set forth in Count 2 if known to the Government;

i. state whether it is alleged that the defendant THOMAS CARROLL did actually commit the act set forth in Count 2 or whether he is charged as an aider or abettor, then who actually did commit said acts;

j. the exact place, location or area, designating the same by street and number where the alleged crime was committed;

k. the exact place and time, if not, the approximate time, when, the alleged crime was committed.

l. the alleged number of wounds which were inflicted upon the said WILLIAM HICKEY causing his death;

m. set forth the names and addresses of all identifying witnesses together with any Police Department Bureau of Criminal Identification and reports, if any, as to each witness.

n. set forth all hospital reports, physicians' reports, concerning the deceased, made and/or reported, in connection with his death;

o. set forth the specific cause of death;

p. the detailed hospital report, if any, in reference to WILLIAM HICKEY, as a patient at any hospital in which he was treated on April 5th, 1973;

q. the detailed autopsy report and toxicoloquist report, to WILLIAM HICKEY, deceased;

46. The government consents to requests g and i.

47. The government opposes requests h and respectfully refers the Court to ¶ 45 above.

48. The government consents to requests j and k in so far as it is able to give that information.

49. The government consents to requests l, o and q only in so far as it reflected in the Autopsy Report of the Medical Examiner of New York County (see ¶ 12 above).

50. The government consents to requests N only in so far as it has such reports in its possession and respectfully refers the Court to ¶12 above.*

51. The government opposes request M in so far as it seeks the names of identifying witnesses and respectfully refers the Court to ¶ 22 - 24 above. The

* It should be noted that requests for such reports is improperly made in a demand for a bill of particulars. However, where the government intends to consent to the discovery it will so note and make such discovery informally unless the Court should order that it be included in the bill.

government opposes the request for "Criminal Identification and Reports" of such witnesses except insofar as it has consented to turn over criminal records of government witnesses, if any, at the time of trial. (See ¶ 34 above)

As to Count three, the defendant CARROLL requests:

AS TO COUNT 3

r. State exactly where in the Southern District of New York the defendants did commit the acts set forth in Count 3.

s. State whether it is alleged that the defendant THOMAS CARROLL did actually commit the acts set forth in Count 3 or whether he is charged as an aider or abettor, then who actually did commit said acts.

t. The exact place, location or area designating same by street and number, where the alleged assault was committed.

u. The exact place and time, if not, the approximate time, when the alleged assault was committed.

v. Set forth the specific wounds sustained by CRAWFORD LAWRENCE.

w. Set forth all hospital reports, physicians' reports, concerning the treatment of the wounds sustained by CRAWFORD LAWRENCE.

52. The government consents to requests r, t and u insofar as it is able to state "exactly."

53. The government consents to request s and v. (Discovery as to v will be made informally. See ¶ 50 above footnote)

54. The government consents to request w only insofar as such reports are in or come into its possession and it respectfully refers the Court to ¶ 11 above. (Discovery will be made informally. See ¶ 50 above footnote)

As to Count One in the indictment, McCloskey requests:

(a) State the location other than the Southern District of New York where the Government will claim MC CLOSKEY and the co-conspirators allegedly conspired.

(b) State the date on which MC CLOSKEY or any co-conspirator withdrew from the alleged conspiracy.

(c) State the date upon which the alleged conspiracy terminated.

(d) State whether there was an express agreement to conspire. If so, state whether the agreement was written or oral. If oral, set forth the exact words spoken by each party to the alleged agreement, or the substance thereof, the date on which they were spoken, the place where they were spoken, and the identities of those present. If the alleged agreement or any part thereof was reduced to writing or is evidenced by any writing, set forth a copy of such writing or writings.

(e) State the name and address of each alleged co-conspirator known to the grand jury but not listed by name in the indictment.

(f) Set forth a description of all of the alleged co-conspirators whose identity remains unknown to the government.

(g) State the manner in which it is claimed that defendant, MC CLOSKEY, participated in the alleged conspiracy and the duration of his participation therein.

(h) Identify each overt act not enumerated in the indictment concerning which the government intends to offer evidence upon the trial.

(i) State the manner in which each overt act as to which the government intends to offer evidence furthered the objects of the conspiracy.

(j) State the dates, places and times of day that MC CLOSKEY is intended to have been present as to each overt act as to which the government intends to offer evidence upon the trial.

55. The government consents to request (e) in that it will disclose the names of co-conspirators presently known to the government but not named in the indictment.

56. The government consents to request (j) but only as to those overt acts set forth in the indictment.

57. The government opposes requests a, g, h and i and respectfully refers the Court to ¶ 45 above.

58. The government does not consent to or oppose request b, but states at the present time it has no knowledge whether or not McCloskey or other co-conspirators withdrew from the conspiracy.

59. The government does not consent to or oppose request c, but states at the present time it has no knowledge when or whether the conspiracy terminated.

60. The government opposes request d, and, in addition, states that it has no knowledge at this time whether or not any part of the conspiratorial agreement was reduced to writing.

JJK:ets

61. The government neither opposes nor consents to request f but states at the present time the government does not possess a description of a co-conspirator whose identity is otherwise unknown.

As to Count Two in the indictment MC CLOSKEY requests:

(a) State the place where, and time, it is contended that the defendants committed the act set forth in Count Two.

(b) State whether it is contended that MC CLOSKEY actually was present and took part in the act set forth in Count Two or whether he is charged as an abettor. State the same information as to each of the other defendants.

(c) State the names and addresses of all persons known by the government to have witnessed the act set forth in Count Two, or any part thereof, and as to each state whether the government intends to produce such person upon the trial.

62. The government consents to request a and b.

63. The government opposes request c and respectfully refers the Court to ¶¶ 22-24 above.

As to Count Three, MC CLOSKEY requests:

(a) Set forth all hospital reports and physicians' reports concerning the treatment of the wounds alleged to have been sustained by CRAWFORD LAWRENCE.

64. The government consents to this request insofar as it has such reports in its possession. The government respectfully refers the Court to ¶ 11 above. (Discovery will be made informally. See ¶ 50 footnote)

As to Count One, the defendant Rippy requests:

1. Names and addresses of all unindicted co-conspirators.

2. Date or dates of the conspiratorial agreement.

3. Place or places at which conspiratorial agreement was made.

4. Names of persons present at time conspiratorial agreement was made.

64. The government consents to request 1 insofar as it has this information in its possession.

65. The government opposes requests 2 and 3 and respectfully refers the Court to ¶45 above.

66. The government opposes request 4 and respectfully refers the Court to ¶¶22-24 above.

As to Overt Act 1 in Count One of the indictment, Rippy requests:

(a) where Myers and the Crawfords met prior to going to the vicinity of Wall Street;

(b) specific place or places to which they went in the vicinity of Wall Street;

(c) how they traveled to the vicinity of Wall Street;

(d) names of other persons present during the time they met and went to the vicinity of Wall Street;

(e) time at which they went to the vicinity of Wall Street.

67. The government consents to request c.

68. The government consents to request e only insofar as it will state the time that it is alleged the defendants went to the vicinity of Wall Street.

69. The government opposes requests a and b and respectfully refers the Court to ¶45 above.

70. The government opposes request d and respectfully refers the Court to ¶¶22-24 above.

As to overt act two in Count one of the indictment, Rippy requests:

(a) time of said meeting;

(b) specific place of said meeting;

(c) names of other persons present at said meeting.

71. The government consents to requests a and b insofar as it has that information.

72. The government opposes request c and respectfully refers the Court to ¶¶22-24 above.

As to overt act three in Count one of the indictment, Rippy requests:

(a) time of said meeting;

(b) name of "John Doe, a/k/a 'Jack'" if now known;

(c) names of others present at this meeting.

73. The government consents to requests a and b.

74. The government opposes request c and respectfully refers the Court to ¶¶22-24 above.

As to counts two and three in the indictment, Rippy requests:

8. Time at which alleged events occurred.

9. Specific place of the alleged killing and the alleged assault.

10. Description of manner in which murder occurred.

11. Precise location of Hickey and Lawrence at time of the murder and assault alleged.

12. Description of weapons used against Hickey.

13. Description of all weapons in possession of the defendants and names of specific defendants who possessed said weapons.

14. Names of other present at time of events alleged.

15. Manner in which defendants charged as aiders and abettors (18 U.S.C. §2) did so.

75. The government consents to requests 8 and 9 insofar as it has this information in its possession.

76. The government consents to requests 12 and 13 only insofar as it relates to weapons which the government intends to prove at trial were actually used in furtherance of the crimes charged in counts two and three.

77. The government opposes requests 10, 11 and 15 and respectfully refers the Court to ¶45 above.

78. The government opposes request 14 and respectfully refers the Court to ¶¶22-24 above.

As to Count one in the indictment, Chester Crawford requests:

a. The names and addresses of those persons known to the Grand Jury to have been co-conspirators but not named in the indictment.

b. The names and addresses of those persons unknown to the Grand Jury, but now known to the government to have been co-conspirators.

79. The government consents to requests a and b only insofar as it will state co-conspirators not named in the indictment but presently known to the government.

As to overt Act 1 in Count one of the indictment, Chester Crawford requests:

c. The place where it will be claimed Meyers and the Crawfords met prior to going to the vicinity of Wall Street, the time of day of the arrival at Wall Street, and the names of other persons present, if any.

80. The government consents to state the time of day of the arrival of the defendants at Wall Street.

81. The government opposes the request to state where the defendants met prior to going to Wall Street and respectfully refers the Court to ¶45 above.

82. The government opposes the request to name other persons present and respectfully refers the Court to ¶¶22-24 above.

As to overt acts two and three in Count One of the indictment, Chester Crawford requests:

d. The time of day of the meetings alleged, and the names of other persons present, if any.

83. The government consents to state the time of day of the meetings alleged.

84. The government opposes the request that it

JJK:cf

name other persons present and respectfully refers the Court to ¶¶22-24 above.

As to Counts two and three in the indictment, Chester Crawford requests:

a. The specific places and times it will be claimed the defendants committed the acts alleged.

b. Whether it will be claimed that the defendant Chester Crawford actually committed the acts alleged or whether he is charged as an aider or abettor.

c. Whether it will be claimed that the defendant Chester Crawford was present or was in the vicinity of, and participated in the acts alleged, and, if so, his exact location.

85. The government consents to request a and b.

86. The government consents to request c except insofar as it calls for the defendant's exact location.

ADDITIONAL MOTIONS MADE BY CHESTER CRAWFORD AND RIPPY

87. In addition, the defendant Rippy has moved this court to suppress statements taken from Rippy by the government as well as evidence seized from Rippy in violation of the fourth amendment. The government respectfully refers the Court to ¶ 13 above. The government has no present intention of presenting evidence taken from Rippy's person at the time of his arrest into evidence at trial. The government is in possession of a statement made by Rippy and requests that any hearing on the question of a violation of Rippy's rights under the fourth and fifth amendments to the constitution be deferred until trial.

88. Both Chester Crawford and Rippy move for discovery of electronic surveillance. The government has no present knowledge of such surveillance and respectfully refers the court to ¶ 4 above.

89. Rippy moves for discovery of "Brady" material in the government's possession. The government respectfully refers the court to ¶ 10 above.

90. Both Chester Crawford and Rippy move for an order requiring the government to make all incarcerated witnesses available for interview. The government does not have any incarcerated witnesses or potential witnesses who are not also defendants in this case. The government consents to make any incarcerated defendant who is a potential government witness, available for interviewing at

JJK:ilf

any convenient time provided that defendant's attorney consents to such an interview. In the case of a defendant who is in fact to be a government witness, if that should be the case, the government will make such witness available for interviewing at any convenient time. The choice of whether such witness wishes to participate in such an interview will, of course, be left to the individual witness.

WHEREFORE, the government respectfully requests that the Court deny all pre-trial motions except as consented to by the Government herein.

John J. Kenney

JOHN J. KENNEY
Assistant United States Attorney

Sworn to before me this
2d day of August, 1973.

Mary L. Avent

MARY L. AVENT,
Notary Public, State of New York
No. 03-4500237
Qualified in Bronx County
Cert. Filed in Bronx County
Commission Expires March 30, 1975

Form 280 A - Affidavit of Service by mail

AFFIDAVIT OF MAILING

State of New York)
County of New York)

I JULIA M. SMALLS being duly sworn, deposes and says that she is employed in the office of the United States Attorney for the Southern District of New York.

That on the 2nd day of AUGUST, 1973 she served a copy of the within AFFIDAVIT AND MEMORANDUM OF LAW by placing the same in a properly postpaid franked envelope addressed:

Michael P. DiRenzo, Esq.
15 Columbus Circle
New York, N. Y.

(SEE ATTACHED)

And deponent further says that she sealed the said envelope and placed the same in the mail drop for mailing the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Julia M Smalls

Sworn to before me this

2nd day of AUGUST, 1973

Walter G Brannon

WALTER G. BRANNON
Notary Public, State of New York
No. 24-0394500
Qualified in Kings County
Cert. filed in New York County
Term Expires March 30, 1975

Donald Hopper, Esq.
29-27 41st Avenue
Long Island City, N.Y. 11101

Frederick P. Hafetz, Esq.
60 East 42nd Street
New York, N. Y. 10017

Jay Gold, Esq.
36 West 44 th Street
New York, N.Y. 10036

Joseph Klempner, Esq.
401 Broadway
New York, N.Y.

Legal Aid Society
Federal Defenders Services
Unit
15 Park Row
New York, N.Y.
Attention: Murry Mogel, Esq.

Robert Mitchell, Esq.
51 Chambers Street
New York, N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

VINCENT McCLOSKEY,

Defendant.

Ind. # 73 CR 606

ORDER

On the affidavits of the defendant VINCENT McCLOSKEY, DONALD HOPPER and JAY GOLDBERG in support of defendant's application to change attorneys and notice of this application having been given to the U. S. Attorney and there being no opposition to the relief requested, it is

ORDERED, that defendant's application to have substituted as his attorney of record JAY GOLDBERG, ESQ., in place and stead of DONALD HOPPER, be and the same is hereby granted.

Charles M. Metzner
U.S.D.J.

Dated: New York, N. Y.
August 7, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

vs. : AFFIDAVIT

VINCENT McCLOSKEY,

Defendant.

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

VINCENT McCLOSKEY, being duly sworn, deposes and says:

I am the defendant herein, I am requesting the right to substitute JAY GOLDBERG as my trial counsel in place and stead of my present attorney of record, DONALD HOPPER.

Mr. Hopper has been notified by me and consents thereto.

No other application for this relief has been made

"AUTHORIZED BY THE ACT OF JULY 7, 1955
TO ADMINISTER OATHS (18 U.S.C. 4004)".

Vincent McCloskey
VINCENT McCLOSKEY

Sworn to before me this

2 day of Aug., 1973

E B Kinney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

vs. : AFFIDAVIT

VINCENT McCLOSKEY,

Defendant.

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JAY GOLDBERG, being duly sworn, deposes and says:

I have been consulted by the defendant and his family and am prepared to assume the responsibility as trial counsel in this case in place and stead of the present attorney of record.

JAY GOLDBERG

Sworn to before me this
1st day of August, 1973

Notary Public, State of New York
No. 03-7720[illegible]
Qualified in Westchester County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
vs.	:	AFFIDAVIT
VINCENT McCLOSKEY,	:	
Defendant.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

DONALD HOPPER, being duly sworn, deposes and says:

I am the present attorney of record for the defendant who advises me that he wishes to substitute in my place and stead JAY GOLDBERG. I have no objection.

Donald Hopper
DONALD HOPPER

Sworn to before me this
2 day of Aug., 1973

JAY GOLDBERG
ATTORNEY AT LAW
STATE OF NEW YORK
[illegible] 9925
[illegible] Bronx County
Commission Expires March 30, 1975

d 73 CR 606, Unit # 5, Judge Metzner

2386a

United States Court of Appeals

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the seventeenth day of July one thousand nine hundred and seventy-three.

Present: HON. LEONARD P. MOORE

HON. JAMES L. OAKES
Circuit Judges

HON. MURRAY I. GURFEIN
District Judge

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
Jul 27 11 18 AM '73

73 CR 606
CANNELLA J

United States of America,
Plaintiff-Appellee,

v.

Thomas Joseph Carroll, John Doe a/k/a "Jack", Vincent Mc Cluskey a/k/a "Mike", Robert E. Rippy a/k/a "Ripp", Chester Crawford, Paul Crawford, Terence Dewey Meyers and Geoffrey Matthews Mann,
Defendants,

Vincent Mc Cluskey,
Defendant-Appellant.

73-2015

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that a reduction of the bail heretofore set by said District Court be and it hereby is denied without prejudice to renewal of the motion in said District Court.

A. DANIEL FUSARO,
Clerk

(A true copy,
A. Daniel Fusaro
Clerk
by Vincent A Carbin
Chief Deputy Clerk

86

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

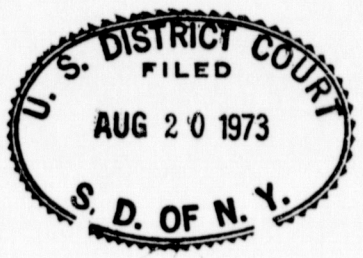
vs.

THOMAS JOSEPH CARROLL,
JOHN DOE a/k/a "Jack",
VINCENT MC CLOSKEY a/k/a "Mike",
ROBERT RIPPY a/k/a "Ripp",
CHESTER CRAWFORD,
PAUL CRAWFORD,
TERRENCE DEWEY MYERS and
GODFFREY MATTHEWS MANN,

Defendants.

73 Cr 606 (CMM)

NOTICE OF MOTION



S I R :

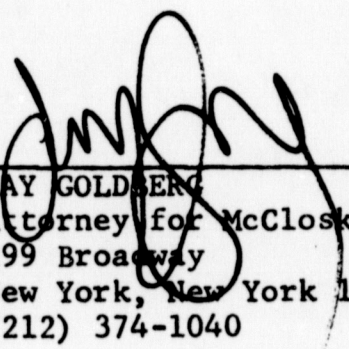
PLEASE TAKE NOTICE that upon the annexed affidavit of JAY GOLDBERG, attorney for VINCENT MC CLOSKEY a motion will be made in this Court at a time and place to be set by the Honorable Charles M. Metzner, U.S.D.J. for an order providing the following relief:

(1) Requiring the Government pretrial to set forth the names and addresses of persons who were at thescene of the crime and furnish copies of any interview statements obtained from any such person provided the Government does not intend to call or use such persons as witness.

(2) Permit the annexed proposed subpoena to be returnable prior to trial, pursuant to FRCrP 17 (C).

Dated: New York, New York
August 17, 1973.

Yours etc.,



JAY GOLDBERG
Attorney for McCloskey
299 Broadway
New York, New York 10007
(212) 374-1040

TO:

JOHN J. KENNEY
Assistant U.S. Attorney
U. S. Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
vs.	
	73 Cr 606 (CMM)
THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack", VINCENT MC CLOSKEY a/k/a "Mike", ROBERT RIPPY a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GODFFREY MATTHEWS MANN,	AFFIDAVIT
Defendants.	

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

JAY GOLDBERG, defendants attorney, being duly sworn deposes and says:

1. In this murder case the newspapers reported there were ten to fifteen eyewitnesses at the scene of the crime who were interviewed. If the Government does not intend to call all of them, then the defense should be furnished with the names and addresses of such persons not intended to be called. Further any interview report should be made available. The Government cannot be prejudiced by pretrial disclosure since all that we seek are names and addresses of witnesses not intended to be used by the Government in its case. Such persons may posses information useful to the defense and no reason can be suggested we submit why such information should be delayed. Interviews by the defense

cannot be effectively conducted during a trial. While the prosecutor states he is aware of his Brade vs. Maryland obligation it is suggested that in a case where the Government cannot be prejudiced (since all that the request seeks is information not intended to be used by the prosecution) due process requires pretrial disclosure.

See in particular U.S. vs. Eley, 335 F.2d 353 (5 Cir. 1972).

The Fifth Circuit reversed a denial of an accused's motion for pretrial discovery of certain information on the ground that such action may have denied the accused the due process requirements which the Supreme Court in Brady had announced. Williams vs. Dutton, 400 F.2d 797 (5th Cir. 1960), cert. denied, 393 U.S. 1105 (1969). The panel held:

> 'It is now clear that Brady imposes an affirmative duty on the prosecution to produce at the appropriate time requested evidence which is materially favorable to the accused either as direct or impeaching evidence.' At 800.

Other Courts as well have explicitly held that under Brady favorable evidence must be disclosed by the prosecution well in advance of trial. United States vs. Leichtfuss, 331 F.Supp. 723 (N.D. Ill. 1971); United States vs. Ladd, 48 F.R.D. 266 (D. Alas. 1969); United States vs. Gleason, 265 F.Supp. 880 (S.D.N.Y. 1967). See also United States vs. Bryant, 439 F.2d 642 (D.C.Cir. 1971).

Accordingly, the first branch of defendant's motion should be granted.

The proposed subpoena seeks police reports designed to uncover evidence favorable to defendant. The subpoena follows the form sustained by the State Supreme Court (Leff, J.) in People vs. Wright, 343 NYS2d 944. This opinion contains a scholarly analysis supporting the need for such pretrial relief as an element of due process.

The motion should in all respects be granted.

JAY GOLDBERG

Sworn to before me this
17 th day of August, 1973.

Notary Public

Subpoena to Produce Document or Object — Cr. Form No. 21 (Rev. 5-68)

2392a

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

VINCENT MC CLOSKEY

No. 73 Cr 606

To POLICE COMMISSIONER of the City of New York

You are hereby commanded to appear in the United States District Court for the Southern District of New York at Foley Square, in the city of New York on the day of 1973 at o'clock M.

to testify in the case of United States v. VINCENT MC CLOSKEY and bring with you: any and all reports, papers and forms of the New York City Rdice Department relating to the murder of William Hickey on April 5, 1973 at Beekman & William Street, New York, N.Y.: forms UF 61, DD-19, UF 6, 911 Tape, arrest dispositinn forms and all other papers concerning the investigation and arrest of the defendants.

This subpoena is issued upon application of the[1] Defendant.

August 17, , 1973.
JAY GOLDBERG
Attorney for Vincent McCloskey
Attorney for
299 Broadway, New York, N.Y.
Address

_____, *Clerk.*

By _____, *Deputy Clerk.*

[1] Insert "United States," or "defendant" as the case may be.

RETURN

Received this subpeona at on
and on at
served it on the within named and tendering to the fee for one day's attendance and the mile-
by delivering a copy to
age allowed by law.[2]

Dated:

_____, 19____

By _____

Service Fees
Travel _____$
Services _____
Total _____$

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

FPI NI—4-18-72-400 PADS-7543

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,
JAY GOLDBERG
Attorney for
Office and Post Office Address
299 BROADWAY
NEW YORK, N. Y. 10007

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

e day of 19

at M.

Dated,

Yours, etc.,
JAY GOLDBERG
Attorney for
Office and Post Office Address
299 BROADWAY
NEW YORK, N. Y. 10007

To

Attorney(s) for

Index No. 73 Cr 606 Year 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEWYORK

UNITED STATES OF AMERICA,

vs.

VINCENT MC CLOSKEY, et al.,

Defendants.

MOTION PAPERS

JAY GOLDBERG
Attorney for Defendant.
Office and Post Office Address, Telephone
299 BROADWAY
NEW YORK, N. Y. 10007
374-1040

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Sept 13, 1973. Item #1 is denied. If the government is possessed of any "Brady" material it shall be furnished to defendant.

Item #2 is denied. The requested subpoena pursuant to F R Crim P 17(c) is really a mask for discovery under Rule 16. Application for such relief must be presented under the latter Rule so that the Court may properly rule on the request.

So ordered

Charles H. Metzner
USDJ

U.S. DISTRICT COURT
FILED
SEP 13 1973
S. D. OF N. Y.

2393a

JJK:bj
73-1865

U.S. DISTRICT COURT
FILED
AUG 24 1973
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v- : AFFIDAVIT

THOMAS JOSEPH CARROLL, et al. : 73 Cr. 606 (CMM)

Defendants. :

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN J. KENNEY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and, as such, I am assigned to and familiar with the facts and prior proceedings in the above captioned matter.

2. This affidavit is submitted in opposition to the motion by the defendant McCluskey seeking an order which would require the government to follow certain exact steps after its witnesses have testified apparently in compliance with its obligations under Brady v. Maryland, 373 U.S.83(1963).

3. The government has already agreed to make the criminal records of its witnesses at trial available to the defense, and to state what arrangement, if any, it has made with any government witness. In addition, the government has been ordered to disclose pending charges against any government witness.

JJK:bj
73-1865

4. The government has indicated it is presently aware of its obligation under Brady v. Maryland and the Court has ordered the government to turn over any such material to the defense.

5. The government stated at oral argument of discovery motions and here reiterates that it will turn over Brady v. Maryland matter the minute it is discovered. Other material such as criminal records, pending charges and agreements with the government will be turned over, not after the witness testifies as McCluskey here requests, but before, allowing a reasonable time for it to be digested by defense counsel without interruption of the trial. As was made clear at oral argument on discovery motions, the government consents to this advance disclosure although not required by law to prevent unnecessary delay in the trial.

6. The government has no obligation to supply defense counsel with copies of indictments and charges not related to the present case. Sufficient information will be given to allow defense counsel to find these materials on their own.

7. The Court has already ruled that the government shall not be required to reveal pending investigations against a witness and the government has no intention of doing so except in so far as such investigations may be part of an agreement between the witness and the government or may be Brady v. Maryland material.

JJK:bj
73-1865

8. The government is fully aware of its obligation to present its case without unnecessary interruption and delay and is prepared to fulfill that obligation.

WHEREFORE the defendant McCluskey's motion should be denied in all respects.

JOHN J. KENNEY
Assistant United States Attorney

Sworn to before me this

23rd day of August, 1973.

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720825
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1975

JJK:ets
73-1865

Firearms and the Bureau of Customs and that no such surveillance had ever been conducted as to any defendant herein.

4. On the basis of this inquiry, the Government represents that none of the defendants named herein have either been the subject of electronic surveillance by the Government nor has any such surveillance been conducted on any premises owned, leased, or licensed by any of the defendants.

John J Kenney

JOHN J KENNEY
Assistant UNited States Attorney

Sworn to before me this
31st day of August, 1973.

Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720825
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1975

2399a

NITED STATES DEPARTME OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

CWB:JSR:mac
177-012

August 20, 1973

Mr. Paul J. Curran
United States Attorney
New York, New York

Attention: Arthur J. Viviani
Assistant U. S. Attorney

Re: United States v. Myers, et al.

Dear Mr. Curran:

This is in response to your letter of July 9, 1973, requesting an all agency survey to determine whether the defendants in the above captioned case have been the subject of electronic interceptions.

Such a survey has been conducted, with inquiries having been made of the following agencies: Federal Bureau of Investigation, Drug Enforcement Administration, U. S. Postal Service, U. S. Secret Service, Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, and Bureau of Customs.

Each agency has reported that none of the defendants in the above captioned case have ever been the subject of electronic surveillance by their agency, nor has any such surveillance ever been conducted on any premises owned, leased, or licensed by any of the defendants.

Sincerely,

CARL W. BELCHER
Chief, General Crimes Section
Criminal Division

By:
JAMES S. REYNOLDS
Attorney

"EXHIBIT A"

Form 280 A - Affidavit of Service by mail

AFFIDAVIT OF MAILING

State of New York)
County of New York)

I John J. Kenney being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 30th day of August, 1973 he served a copy of the within Affidavit by placing the same in a properly postpaid franked envelope addressed:

Michael DiRenzo, Esq.
15 Columbus Circle
New York, N. Y. (SEE ATTACHED)

And deponent further says that he sealed the said envelope and placed the same in the mail drop for mailing the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

John J. Kenney

Sworn to before me this

30th day of August, 1973

Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720825
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1975

A 202 Affidavit of Personal Service of Papers H LUTZ APPELLATE PRINTERS INC.

U.S. COURT OF APPEALS:SECOND CIRCUIT

Index No.

U.S.A.,

Appellee,

against

CARROLL, et al,

Defendants-Appellants.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, James Steele, being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York

That on the 10th day of June 1974 at Foley Square, New York

deponent served the annexed Appellant's Brief upon

Paul J. Curran-U.S. Attorney Southern District-Attorney for Appellee

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

James Steele

Print name beneath signature

Sworn to before me, this 10th day of June 1974

JAMES STEELE

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975